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Legislative
Assembly
of Ontario



Assemblée
législative
de l'Ontario

Official Report of Debates (Hansard)

SP-32

Journal des débats (Hansard)

SP-32

Standing Committee on Social Policy

Strengthening Protection
for Ontario Consumers Act, 2017

Comité permanent de la politique sociale

Loi de 2017 sur le renforcement
de la protection
des consommateurs ontariens

2nd Session
41st Parliament

Monday 20 November 2017

2^e session
41^e législature

Lundi 20 novembre 2017

Chair: Peter Tabuns
Clerk: Jocelyn McCauley

Président : Peter Tabuns
Greffière : Jocelyn McCauley

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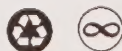
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Hansard Reporting and Interpretation Services
Room 500, West Wing, Legislative Building
111 Wellesley Street West, Queen's Park
Toronto ON M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario



ISSN 1710-9477

Service du Journal des débats et d'interprétation
Salle 500, aile ouest, Édifice du Parlement
111, rue Wellesley ouest, Queen's Park
Toronto ON M7A 1A2
Téléphone, 416-325-7400; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

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THE UNIVERSITY OF CHICAGO

THE UNIVERSITY OF CHICAGO, CHICAGO, ILL. 60637

TO THE PRESIDENT OF THE UNIVERSITY OF CHICAGO

FROM THE DEAN OF THE FACULTY

SUBJECT: [Illegible]

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
SOCIAL POLICYCOMITÉ PERMANENT DE
LA POLITIQUE SOCIALE

Monday 20 November 2017

Lundi 20 novembre 2017

*The committee met at 1400 in committee room 1.*STRENGTHENING PROTECTION
FOR ONTARIO CONSUMERS ACT, 2017
LOI DE 2017 SUR LE RENFORCEMENT
DE LA PROTECTION
DES CONSOMMATEURS ONTARIENS

Consideration of the following bill:

Bill 166, An Act to amend or repeal various Acts and to enact three new Acts with respect to the construction of new homes and ticket sales for events / Projet de loi 166, Loi modifiant ou abrogeant diverses lois et édictant trois nouvelles lois en ce qui concerne la construction de logements neufs et la vente de billets d'événements.

The Chair (Mr. Peter Tabuns): Good afternoon, committee members. The Standing Committee on Social Policy will now come to order. We're meeting this afternoon for public hearings on Bill 166, An Act to amend or repeal various Acts and to enact three new Acts with respect to the construction of new homes and ticket sales for events. Please note that written submissions have been distributed to you.

The time allocation motion states that each witness will receive up to five minutes for their presentation, followed by nine minutes for questions from committee members. I propose that the time for questions by committee members be divided equally among the three parties. Are we agreed? Agreed.

MUSIC CANADA LIVE

The Chair (Mr. Peter Tabuns): Are there any questions before we begin? There being none, our first witnesses, from Music Canada Live: Erin Benjamin and Jesse Kumagai. When you start, if you would introduce yourselves so you'll be recorded by Hansard. I'd ask you so speak directly into your microphones and project so that we get a clear record. Please.

Ms. Erin Benjamin: Thank you. My name is Erin Benjamin. I'm the executive director of Music Canada Live.

Mr. Jesse Kumagai: I'm Jesse Kumagai. I'm the board chair for Music Canada Live.

Ms. Erin Benjamin: Thank you very much for the opportunity to speak with you today. Music Canada Live is the national trade association representing Canada's

live music sector. We are the concert industry. Our core members are concert promoters, festivals, venues, clubs, arenas and stadiums, concert halls, agents who represent the artists, and ticketing companies.

We have members from coast to coast to coast, and our primary goal is to advocate on behalf of our stakeholders and the significant social, cultural and economic impact of live music activity here in Ontario—the largest live music market in Canada—and across the country. In a recent economic impact study, we were able to demonstrate that live music in Ontario contributes \$1.2 billion to our GDP and creates 20,000 jobs.

We've appreciated the chance to consult with government regarding ticket legislation since the introduction of MPP Kiwala's private member's bill amendment, having submitted a series of recommendations for the government's consideration last year.

We absolutely support some key measures in the proposal, including the outright banning of bots and ensuring the right of private action, which would allow for civil enforcement. However, we remain concerned that the legislation, if passed as is, will have a myriad of unintended negative consequences for consumers.

There are three key pieces of the legislation that we'd like to address today that we feel require further exploration and study. They are enforcement, inventory disclosure and price caps.

First, inventory disclosure: The measures present some serious operational and administrative hurdles for the sector. Rather than improve transparency for consumers, we believe they'll have the opposite effect of confusing patrons and propagating negative views of the concert industry.

As is, the legislation proposes that the total venue capacity and inventory of tickets available for public on-sale be disclosed seven days prior to that on-sale. The problem is, this information is generally dictated by the artists, who are the content owners, not the promoter, venue or ticketing company, and it's rarely decided seven days prior. It can remain fluid, with regular changes right up to and during the on-sale. There are a variety, therefore, of real situations where tickets may not be made publicly available at the on-sale, ranging from, as we say in the industry, "killed seats" for technical reasons to inventory being made available as part of pre-sales.

If passed as is, the legislation will inevitably lead to events where the inventory being made available for the public on-sale is notably lower than the venue capacity,

leading the public to believe that unscrupulous activity is taking place within the missing inventory. Providing the public with only the supply half of the supply-and-demand equation does nothing to protect consumers.

Additionally, this information could reflect badly on an artist's image and reputation and so will be unlikely to be universally accepted by the artists. If it isn't, we could see far fewer concerts in Ontario, especially in smaller markets such as Ottawa, London, Kingston, Sudbury and others. Major acts may just decide that one more barrier to doing business in Ontario, particularly in smaller markets, isn't worth the effort. Therefore, fewer fans will have less access to the music they love, and the many businesses that benefit from a thriving concert industry, such as restaurants, hotels and tourism in general, will lose outright on the ancillary revenue that live music events create in any given market.

We'd like to acknowledge that the Attorney General's office has indicated they would receive suggestions as to how to better navigate the disclosure piece, and we look forward to working with the honourable minister to provide additional insight and direction.

To price caps: to our knowledge, this is the only private sector good or service to be subject to such a cap, and we believe it is both unfair and unenforceable. The responsible corporate operators will adhere to the law, but most common marketplace transaction sites, such as Kijiji and Craigslist and out-of-jurisdiction resellers, will not, nor do we believe that there's any possibility of comprehensive and effective enforcement. This will have the undesired effect of driving even more secondary ticketing activity to these online scalpers, where consumer protections are virtually non-existent.

We firmly believe that the most significant challenge derived from the secondary ticketing market is the fraudulent activity that results in patrons overpaying for tickets that may not even be valid, and we expect a resell cap to result in an increase in this activity rather than prevent it. In addition to hurting fans, an increase in fraudulent activity provides zero financial benefit to artists, industry and government.

Capping resale prices will not ensure that tickets are sold safely. Why not? Enforcement. Whether we're talking about bots, resale caps, speculate postings or any other aspect of the proposed legislation, these interventions will only be effective if thoroughly and unrelentingly enforced, which we believe will both be impossible to achieve and unreasonably costly to attempt.

The better strategic approach, and what Music Canada Live has consistently been recommending to government, is to create safe transactional spaces built on a foundation of ticket authentication, technological defences and, of critical importance, the public education piece to address the threats facing consumers.

Music Canada Live has offered and looks forward to working with the government to create effective awareness tools and campaigns designed to deepen public awareness and keep fans safe. We are the concert industry. We know this business, and we know that this legis-

lation will not achieve the government's goals, which we share, with respect to consumer protection as it is currently designed—

The Chair (Mr. Peter Tabuns): I'm sorry to say that you're out of time.

Ms. Erin Benjamin: Thank you.

The Chair (Mr. Peter Tabuns): We'll go to the first questioner: to the opposition. Mr. McDonnell?

Mr. Jim McDonnell: In the makeup of this bill, were you consulted by the government, or was there consultation that you feel was fair?

Mr. Jesse Kumagai: We've been consulting with the Attorney General's office on several occasions. We've had opportunity, as Erin mentioned, to express some of our concerns and recommendations in writing. So we have met on several occasions.

Mr. Jim McDonnell: Okay. One point that we had heard that might help out with the public's concern would be the ability, for the first hour of general availability, to restrict sales to residents of Ontario, which could easily be done through credit cards. It would at least give local people a chance to purchase tickets. Any comments on that?

Mr. Jesse Kumagai: What we've found is that if you do that, you're going to be putting a lot of Ontario residents at a disadvantage who may have credit cards that are from—we encounter university students who are here buying tickets with their credit card that may have been issued in Halifax. We encounter a number of scenarios where that probably wouldn't provide a comprehensive solution—also very difficult to police and enforce.

Mr. Jim McDonnell: And that does present problems to some people, but for the vast majority it would be at least a way of securing a ticket versus the practice we've seen so far.

Mr. Jesse Kumagai: The other comment I'd make on it is that we're very strong advocates of using the power of music as a tourism draw. It represents a significant amount of influx of funds into the province. So putting further barriers in front of people to prevent them from wanting to do so could be problematic.

Mr. Jim McDonnell: There are always other programs that go along with this. The tickets, the radio stations—tickets used for promotion. Would there be some logic to restricting that to, say, 25% of the total tickets and then the rest be put out for sale with disclosure of just how many are for sale?

Mr. Jesse Kumagai: That becomes a real issue for the artists themselves. The vast majority of the cases—especially the cases where the secondary market is prevalent—usually involve very high-demand shows. In those situations, the artists are electing to use various presale channels, whether it's an American Express part of the line, their own fan club or some other tool, in lieu of marketing efforts that involve spending money. The more money that's saved during a marketing exercise, the more money ends up in the artists' pockets, which is why they're driving a lot of this out.

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Mr. Jim McDonell: Yes. So 25% is a substantial number to make available for those programs.

The Chair (Mr. Peter Tabuns): Mr. McDonell, I'm sorry to say you're out of time. We'll go to the third party: Ms. Gretzky.

Mrs. Lisa Gretzky: So, I come from a riding where we have a venue where we host many, many concerts. Caesars Windsor is in my riding. I've been to many concerts there myself. I know how they work, as far as if you're a member and you've spent a lot on their gambling in their facility or staying in their hotels, they often hold tickets for what they consider VIPs. They will get first crack at those tickets. Sometimes they're at a reduced cost. There are perks for being members of Caesars Windsor.

I'm wondering—because I've heard stories from other people as well, other venues that withhold as much as 25% to 90% of tickets before they ever go out to the public for sale. If that's true, do you think that that leaves enough tickets for the general public to actually get—I'm not suggesting that Caesars Windsor does that. I know they have their own way of doing things based on memberships and stuff. I don't think I've ever been to a concert there where it hasn't been a full house.

But other people have come forward and said there are venues that hold anywhere from 25% to 90% of those tickets back, and those aren't available to the general public. Do you think that's causing an issue for the general public?

Mr. Jesse Kumagai: I think what you'll see as an industry standard is a much lower percentage than that. It's very uncommon for anybody else to be using that 90% rule. But what I will say is that there are so many different business models in place for the way that companies interact.

One of the big questions that we have around this legislation is: Where do you draw the line? What is the cut-off? We've certainly hosted events—I'm also the director of programming at Massey Hall—where a corporate entity may come in and elect to do an event where the only attendees are people who arrive through some particular channel. Does that mean that those events would then be illegal? We don't really know, as an industry, how to respond to that right now. But I would say, for the vast majority of publicly ticketed concerts, you're definitely seeing the majority of tickets being made available for public sale, or being made available through some channel that has either no or very few barriers to access.

Mrs. Lisa Gretzky: Okay. For my next question I'm going to roll two pieces in, because the time is limited. In New York state, they passed legislation so that consumers can actually request a hard copy of a ticket. I think you've mentioned in your presentation that sometimes people buy tickets thinking they've actually got a ticket, and they might get to the event and be denied entry because somebody else has also purchased that same ticket. Is that something that you're in support of, people being able to receive physical tickets if they want it?

The other piece is around accessibility. One of the first groups that reached out to the New Democrats were residents who were concerned that the bill didn't touch on the availability of tickets for those who had accessibility issues, so those who are disabled. Do you believe the bill goes far enough—

The Chair (Mr. Peter Tabuns): Sorry, Ms. Gretzky. You're out of time. I apologize.

We go to the government: Mr. Dhillon.

Mr. Vic Dhillon: Thank you very much for your presentation. Can you tell us what some of the key challenges facing consumers who are trying to purchase tickets to events in Ontario are?

Mr. Jesse Kumagai: I'd say the biggest issue that we're faced with on the front lines day to day is the fraudulent activity in the marketplace. It's really not a question of the supply-and-demand factor, because that has been prevalent throughout the history of concerts. Our biggest issue comes with the people who either purchase through the secondary market, not realizing that they're purchasing through a secondary site and overpaying for it. Worse yet are the people who arrive at the gate with tickets that are fraudulent. I have countless examples of those I'd be happy to share with anybody.

Mr. Vic Dhillon: What have other jurisdictions done to combat the use of ticket bots?

Mr. Jesse Kumagai: It's in its infancy right now. It's fundamentally an arms race: Every time somebody comes up with an intervention that seems to mitigate the problem, the people responsible for it find a solution. We've yet to see anything that I'm aware of that is an effective combat against the bots.

Mr. Vic Dhillon: What's your opinion on our proposal to ban the scalper ticket bots?

Mr. Jesse Kumagai: I very much support it if a method can be found to enforce it. Our challenge is that this is an international issue. It's an Internet-based issue. It's not something that is easily policed.

Mr. Vic Dhillon: Okay.

The Chair (Mr. Peter Tabuns): Thank you, Mr. Dhillon. Thank you very much for your presentation today.

Mr. Jesse Kumagai: Thank you very much.

Ms. Erin Benjamin: Thank you.

CANADIAN TICKET BROKERS ASSOCIATION

The Chair (Mr. Peter Tabuns): We go to our next presenter: the Canadian Ticket Brokers Association. Welcome. As you've heard, if you could introduce yourselves for Hansard—and speak directly into the mikes, just so we have a very clear audio record. Thank you.

Mr. Ervil DiGiusto: Ervil DiGiusto, StarOne Tickets.

Ms. Angie Coss: My name is Angie Coss. I am the president of the Canadian Ticket Brokers Association. I'm here to speak to schedule 3 of the bill today and to provide the CTBA's recommendations on how to enhance protection for consumers while maintaining a fair and open market in Ontario.

The CTBA was founded in 2009, and we represent Canada's professional ticket brokers, with 19 members here in Ontario alone. We're committed to promoting and maintaining the integrity and service of ticket brokers in Canada. CTBA members are not scalpers; we are furthest thing from the "superscalper" in the media recently. Our members are reputable ticket brokers and small business owners employing Ontarians and paying taxes. We work locally, connecting hotels, businesses and fans with tickets. Our strict code of ethics includes a 200% money-back guarantee and prohibits the use of bots.

The CTBA has engaged with the Ontario government over the past two years on issues impacting the ticket market and consumers. We've expressed our significant concern about Ticketmaster launching a secondary-market ticket platform in Ontario, despite the existing and proposed law clearly stating that primary and secondary sellers cannot be related, and the need for this prohibition to be enforced.

We've also pushed for greater consumer protection, including many of the measures in this bill. To maintain a fair and open market that better protects consumers, several amendments must be made. The proposed legislation fails to fully protect Ontario consumers with proven approaches from other jurisdictions, and it puts huge burdens on our Ontario members without any way to enforce against out-of-province and out-of-country resellers. We're proposing five amendments that would better protect consumers and maintain a fair and open ticket market.

First, limit the proportion of ticket holdbacks by primary sellers to no more than 25% of the total number of tickets to the event, excluding season tickets, individual subscriptions and executive suites. For many popular events, there will never be enough tickets to satisfy demand, but the lack of tickets for consumers is made much worse by a dwindling number of tickets available for sale to the general public. A CBC Marketplace report confirms that often over 50% of tickets to a concert are set aside as holdbacks reserved for venues, promoters, sponsors etc. We're pleased that the bill requires more transparency about how many tickets are available and how they are being distributed. Consumers deserve to know the truth. But it won't have any impact for regular people trying to buy tickets unless primary sellers make more of their inventory available to consumers.

Our second recommendation is to require primary sellers to give Ontario consumers the right to receive a traditional hard-copy ticket at no extra charge. There is no requirement in Ontario for primary ticket sellers to do this today or in the bill, unlike in New York, where primary sellers must provide consumers with this option at no extra charge. When consumers pay for a ticket, they expect they can use it as they see fit, not when and how the primary seller forces them to.

Our third recommendation is, based on the proven approach implemented in Saskatchewan since 2011, to require primary sellers to limit online, electronic or telephone ticket sales to Ontario-based customers during

the first hour tickets are available for purchase, whether in presale or to the general public. Now, this first-hour rule will ensure that the worst offenders—bots from outside of Ontario—are unable to buy tickets until Ontario consumers have had a reasonable chance to buy them. One hour isn't a lot of time; you would hardly notice it for many events. But for high-demand events, where out-of-province bots can allegedly buy up thousands of tickets in seconds, it will make all the difference for Ontario consumers. It will also help ensure that Ontario's new laws can be enforced, as anyone using a bot will be Ontario-based and subject to the tough new penalties. It recognizes that the majority of Ontario tickets sold on the resale market are being marketed by entities and individuals outside of Ontario.

Our fourth recommendation is to limit the new right to commence a private action in court to individual consumers only. The CTBA is deeply concerned that this would allow businesses to take legal action towards one another and would be used to intimidate and litigate against smaller local competitors, including CTBA members. The proposed legislation gives the province tough new powers to investigate, enforce and penalize businesses that are contravening the law. While the right-of-action clause is appropriate for consumers, it's unnecessary for businesses and carries a high risk of misuse.

Finally, we recommend that Ontario not implement price caps on ticket resale. We understand that consumers are frustrated by the perception of unfairly high-priced tickets and that a price cap seems like a good idea; however, they simply do not work. There is decades of research to show that price caps don't keep prices down or improve access to tickets. Setting arbitrary caps undermines legitimate brokers and drives ticket resale back to the black market, where there is no consumer protection and more risk of fraud. Since the late 1980s, more than 20 US states have dropped price caps in favour of a fair and open market.

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To conclude, these amendments, if passed, will empower Ontario consumers and maintain a fair and open ticket market to better achieve the goals of Bill 166. By putting access, choice and protection of Ontario consumers as well as legitimate secondary sellers at the forefront, the Ontario government will give Ontarians a fair edge in the ticket market. Thank you for the opportunity to appear today.

The Chair (Mr. Peter Tabuns): Thank you. We start with the third party: Ms. Gretzky.

Mrs. Lisa Gretzky: I think you touched on some of the questions I was going to ask. We do have some amendments that we're bringing forward that will address some of the issues that you raised.

I just have one question for you. One of the very first groups that reached out to New Democrats were those concerned with this bill and what it may or may not do to support people with disabilities having access to tickets. Do you find that this bill is going to do enough to ensure that people with disabilities can access tickets in a fair way?

Ms. Angie Coss: From my understanding and my experience, for people who have disabilities, it's a separate line altogether and they call in—are you talking about physical disabilities?

Mrs. Lisa Gretzky: Any disability. They could have a developmental disability—

Ms. Angie Coss: My understanding is, that's a separate line altogether; that is a completely different animal. If somebody has a disability, there should be lines set up specifically for that type of wheelchair access or disability access. I don't think it would affect it in any way—positive or negative.

Mrs. Lisa Gretzky: Okay. Did you see anything in this bill that you think speaks specifically to that particular group of people? Do you find they're absent from the bill, so it's not going to change anything for them?

Ms. Angie Coss: I have not seen anything that addresses that specific situation. I think that it's something that should be addressed. I'm not here to make any extra proposals or recommendations, but an extra line that would accommodate that would be something that would be nice.

Mrs. Lisa Gretzky: Okay, all right. Thank you.

The Chair (Mr. Peter Tabuns): We go to the government: Mr. Dhillon.

Mr. Vic Dhillon: Can you tell us about some of the challenges that Ontario consumers are facing when they're trying to buy tickets for events?

Ms. Angie Coss: I think Ontario consumers are facing the challenge of just not being able to get tickets. You're forever online trying to buy and it's sold out, sold out, sold out, because there just simply aren't enough tickets. I see it often, especially since the regulation was put in, that it just becomes a very grey area, as far as I'm concerned, where your primary has sold out of tickets or there are not a lot of tickets left but you're quite often shifted over to a secondary site where you're buying tickets at above face value. It's very deceiving to the regular consumer. I think it's not clear. I think that you have to tick off a little tiny box to know that you're not buying on the secondary market. I think that it all comes back to tickets not being made available to the public and it being deceiving.

Mr. Vic Dhillon: So what's your opinion on our proposal to ban ticket scalper bots?

Ms. Angie Coss: The Canadian Ticket Brokers Association has a strong code of ethics where we are anti-bot. We don't allow any of our members to have bots. We think that it's very important. However, the majority of the tickets that are sold on the secondary market are from out of Ontario, so how are you going to govern that? How are we going to police that? To me, it almost seems impossible to be able to police that. We are totally anti-bot. We would love to make sure that there were no bots because it hurts our industry as well as it hurts the consumers.

Mr. Vic Dhillon: Okay. That's fine, Chair. Thank you very much.

The Chair (Mr. Peter Tabuns): To the official opposition: Mr. Coe.

Mr. Lorne Coe: Thank you very much for your delegation this afternoon. I'm on page 11, which deals with price caps on ticket resale. Your narrative in that section talks about research that has been undertaken in the United States, but prefacing that is the statement that price caps do not work. Is there empirical data that you're aware of here in Canada that would support that statement, other than what you've cited here in your deputation?

Ms. Angie Coss: I don't have specific data that was created here in Canada. However, we'd be more than happy to forward the chapters and chapters of data that we have that shows it in the States, unfortunately.

Mr. Lorne Coe: I'd be interested in seeing the most recent research on this particular topic, because in your delegation you talk about setting arbitrary caps as a disincentive to legitimate brokers that drives secondary market sales back to the black market. Supplementary to the research that's available by the professor in Arizona, if you had, again, empirical data that supports that statement, it would be important for us to look at.

Ms. Angie Coss: I can see what we can do. But I can speak on the fact that, again, being in this industry for as long as I've been in this industry, the vast majority of tickets that are sold on the secondary market are sold out of province. We're only going to hurt our own people in Ontario. We're only going to hurt the ticket brokers in Ontario. Those are the ones who are going to be policed, and they're not doing anything wrong. Meanwhile, the people in the States, the people outside of Ontario, are going to continue to sell. People are going to go into that black market, they're going to go on Kijiji, they're going to go to all these places where there is no consumer protection, where there is no hard ticket, where there is no office, where people are not paying taxes. That, to me, is my own personal data that I've brought together.

Mr. Lorne Coe: All right. Thank you, Chair. To my colleague.

The Chair (Mr. Peter Tabuns): Mr. McDonell.

Mr. Jim McDonell: This bill, you feel, just misses the mark. It's not going to really help the consumer, and it will drive business out of the province as you put restrictions on.

Ms. Angie Coss: I don't think it's going to drive—will you please repeat that?

Mr. Jim McDonell: It puts Ontario businesses, in many cases, at an unfair advantage, so it will drive some of that business, at least, out of the province and the resellers—

Ms. Angie Coss: I think it's going to hurt the consumers in the sense that you're not going to be dealing with your local people. The Canadian Ticket Brokers Association members deal with the hotels and we deal with the concierges. We have our regular customers that come to us when they don't have time to sit on and get, "Sold out, sold out, sold out." You're going to take away that human aspect that everybody has when dealing with your own Ontario brokers, and you're going to be sending them to this website, this Internet world.

Mr. Jim McDonell: Because one thing for sure this bill can't control is out-of-province or out-of-country distributors. The bill talks about it as if it's a solution, but really, the Internet's international. It's not tied to Ontario. Unless you get a company that's registered in Ontario, you have no teeth.

Ms. Angie Coss: Right, and all the members of the Canadian Ticket Brokers Association are registered in Ontario, the ones that are here. Yes, I agree with what you're saying.

Mr. Jim McDonell: It's important to have a credible organization that has a reputation, where people know they can go to actually get the tickets they want, and know you're paying in Canadian dollars and all those things. As soon as you step outside the country, those things all are up for grabs.

Ms. Angie Coss: And if something should happen that you can't get into the show, let's say, on the odd chance—because it's very rare with our brokers—you're going to pick up the phone and you're going to call your guy and he's going to make sure that he is there, right then, that night; that you're going to get in, you're going to get a money-back guarantee. It's a 200% money-back guarantee that we offer to our consumers. It's not something that they take lightly. This is their life, this is their industry, and they take it very, very seriously.

The Chair (Mr. Peter Tabuns): With that, we're out of time. Thank you very much for your presentation today.

Ms. Angie Coss: Thank you.

Mr. Ervil DiGiusto: Thank you.

MS. BARBARA CAPTIJN

The Chair (Mr. Peter Tabuns): Next, we have Barbara Captijn. Barbara, as I've said, if you'll introduce yourself for Hansard and speak directly into the microphone so we can all hear you clearly.

Ms. Barbara Captijn: Thank you, Chair Tabuns and members of the Standing Committee on Social Policy. My name is Barbara Captijn, and I'm an independent consumer advocate.

I think one thing that we can all agree upon in this room is that the buyers of new homes in Ontario should be entitled to get what they pay for. They should be entitled to get homes which are properly built and free of construction defects. Is Bill 166 the fix for the decades-long problems with the Tarion Warranty Corp. and the new Ontario New Home Warranties Plan Act? I believe it is not, and I'm going to explain to you why.

As a bit of background, many of you here in this room know that there have been years of complaints from consumers to their MPPs and to the ministry about the government monopoly Tarion and problems with dispute resolution, lack of transparency in builder records, and lack of consumer involvement in policy-making. Many consumers have experienced serious financial and emotional consequences from this faulty legislation.

After a decade of concerns from the public, the government finally announced a review of Tarion in 2016

conducted by Justice Cunningham. The judge concluded that there were "fundamental problems" with the current Tarion framework and "real and perceived conflicts of interest" in the delivery of its services.

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He made 37 recommendations, one of which was to abolish Tarion's monopoly in new home warranties and to provide, as in other provinces, a multi-provider model. This is a recommendation the government has ignored without explaining why to the public.

In June of this year, the Ministry of Consumer Services set up a closed-door consultation group of 11 people, of which I was the only independent consumer advocate. The group was stacked toward Tarion representatives and those with business ties to Tarion. Many of the judge's key recommendations were ruled out of the scope of the discussions; for example, the multi-provider model.

I believe this is the wrong approach to take in consultations about public policy. They should not be behind closed doors and they should not be confidential.

My dissenting feedback on those consultations you'll find in the presentation I've left for you today. I believe it's just the wrong approach to take when you're talking about public policy and something which affects the most important expenditure consumers will make in their lifetimes: the purchase of a new home.

I believe there are five points that should be taken into account in considering amendments to Bill 166 for new-home buyers.

Number one, the judge's review recommended that Tarion's monopoly be ended, and yet what we see, we think, in Bill 166 is merely Tarion continued, minus the regulation of builders. Also, this structure of two administrative authorities was presented to the consultation group as a *fait accompli*. It was not asked of the consultation group, "Do you think this is a good idea?" or, "Would you like to see our research on why we think this is a good idea?" Nothing like that was presented to the consultation group.

I believe that to ignore the fundamental point of the judge's review and pick and choose among its 36 recommendations is to distort the overall consumer intent of the judge's review.

My second point is regarding administrative authorities. There have been debates in the Legislature and private members' bills brought to the Legislature to try to tackle the lack of accountability and transparency to the public of administrative authorities. There seems to be no system of checks and balances brought in to these two administrative authorities which Bill 166 is recommending except the Auditor General.

That leads me to my next point. Bill 166 should include oversight by the Ombudsman of Ontario, the freedom of information and privacy act and the registered lobbyists act as well so that consumers can tell who's lobbying these two administrative authorities.

Minister MacCharles promised us in March 2017, when she released the judge's review, modern transpar-

ency and accountability tools in this new bill. But we only see one: the inclusion of the Auditor General's oversight.

Fourth and most importantly, one of the most contentious issues for consumers has been the perceived unfairness in the resolution of warranty disputes by Tarion. Now Bill 166 says that consumers do not have to prove the underlying cause of the defect. That's like sending the consumer into a battlefield with no ammunition. Even if this dispute goes to the Licence Appeal Tribunal, which is also included in the bill, how is an adjudicator to decide in favour of the consumer if the consumer has no evidence whatsoever and the opponents—Tarion and the builders—have all of their research and their experts to refuse to cover a claim?

The Chair (Mr. Peter Tabuns): I'm sorry to say that you're out of time. We're going to go to the government for the first round of questions: Mr. Dhillon.

Mr. Vic Dhillon: Thank you for your presentation. Bill 166 proposes to protect consumers in a variety of ways. Which of these are the most significant to consumers?

Ms. Barbara Captijn: Dispute resolution. It has to be perceived as fair and independent, and I underline five times the word "independent." It can't be the warranty monopoly that holds the purse strings on the warranty payouts that also adjudicates claims. On the one hand, you have opposing interests: The warranty authority wants to hold on to the money; the consumer wants to get his home fixed and the claim paid out. To me, it's not an independent dispute resolution system you've set up in Bill 166. It fails consumers badly in that sense. Dispute resolution is so key.

Mr. Vic Dhillon: What are your views on the proposed enhancements to licensing, compliance and enforcement of new-home builders and vendors?

Ms. Barbara Captijn: Well, that's a key point, too. I didn't have time to mention it here, but one of the weaknesses that the judge found in his interim report was—and he said this almost word for word—Tarion does not have the compliance tools at its disposal to properly regulate builders. That has left consumers vulnerable. These are the words of the judge; those are the findings of his report. Those are not my words. But we can see that this has been an issue.

The problem with creating a separate administrative authority to regulate builders is that it might eventually be captured by the industry itself. There are no checks and balances in place to make sure that that doesn't happen.

Mr. Vic Dhillon: I know you've mentioned dispute resolution. In your opinion, what additional measures, if any, would help the proposed warranty authority resolve disputes between new-home builders and vendors and homeowners?

Ms. Barbara Captijn: Well, I think it has to be an independent body; therefore it will be perceived to be fair by the consumer. If it's handled within the warranty, as you have it set up now in Bill 166, then you're back to

the same problem of there being conflicts of interest within that monopoly—so the wish to hold on to the purse strings and not pay out claims and the consumer's need to get his home fixed and get the claim paid out.

That's one of the conflicts that I don't think you've addressed sufficiently in the bill. You can't have a monopoly warranty authority doing that. That's why the judge recommended the multi-provider model. The government will not explain to us why you are overriding the judge's advice.

Mr. Vic Dhillon: Thank you.

The Chair (Mr. Peter Tabuns): We go to the opposition: Mr. Hillier.

Mr. Randy Hillier: Thank you very much for being here today, and thank you for the deputation. I do hope all members of the committee have a few moments to read through this deputation. I think there are a lot of solid recommendations in there for members to consider, and I know five minutes is not a very lengthy time to talk about this subject.

Going through your written presentation here, and from the earlier discussions, it would lead people to believe that the government set out to intentionally use the working group to subvert and to frustrate Justice Cunningham's recommendations. Would that be a fair comment?

Ms. Barbara Captijn: Well, I found it curious why—and I asked the working group to distribute copies of the judge's review. They did not do that. Some of the members in that 11-member group spoke as though they'd never read it. That was of concern to me, and I voiced that concern.

It's also curious to me—and this is a fault of that consultation process. If you want to consult with people, you leave the options open. You don't narrow the scope so that you change the judge's review fundamentally and say, "What do you think of these two administrative authorities?" The judge did not recommend that at all.

Mr. Randy Hillier: So they prevented the working group from actually discussing options that Justice Cunningham put forward as recommendations, like the multi-service provider?

Ms. Barbara Captijn: Yes.

Mr. Randy Hillier: And to this day, you still have not been able to ascertain any reason behind that determination?

Ms. Barbara Captijn: Correct.

Mr. Randy Hillier: Maybe that's a question we should pose to the members opposite on the Liberal side: Are they aware that the ministry purposely—the working group, which was providing consultation and advice back to the ministry, was prevented and frustrated from discussing the key element of Justice Cunningham's report, the multi-service-provider model, in effect distorting the very functions of the working group?

Ms. Barbara Captijn: Well, most of the working group members—a lot of them were favourable to the status quo with Tarion. As the independent consumer advocate there, I was the one voicing concerns about this,

because why spend \$750,000 on a review, give it to a prominent judge, let him do consultations for a year and then brush aside what he has recommended?

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I don't know who has brushed aside the judge's review and why, but somebody came up with the idea of two administrative authorities and nobody can show us who researched that—

Mr. Randy Hillier: But you were invited by the ministry to be on that working group—

The Chair (Mr. Peter Tabuns): Mr. Hillier, I'm sorry to say that you're out of time.

We go to the third party: Ms. Gretzky.

Mrs. Lisa Gretzky: I want to thank you for being here today. The first question I'm going to ask you is pretty straightforward: Do you feel that Bill 166 properly protects the rights of consumers?

Ms. Barbara Captijn: No.

Mrs. Lisa Gretzky: Do you feel that the working group—you mentioned that you were there as a consumer representative. You were the only person there representing consumers, am I correct?

Ms. Barbara Captijn: Correct.

Mrs. Lisa Gretzky: Do you feel that the working group had proper representation for consumers, and was it a free and open process as far as properly analyzing and looking at the recommendations that had been made previously?

Ms. Barbara Captijn: No to both of those.

Mrs. Lisa Gretzky: Okay. Do you feel that the working group was transparent and accountable to the public?

Ms. Barbara Captijn: Well, we were told to be confidential about who said what. I don't have a problem with anybody quoting me on anything I say on behalf of consumers, but apparently, that was not the wish of either the ministry or the people in the consultation group. I think that's wrong.

We were told to act "in the best interests of all Ontarians." If that's what you're doing, there's no reason for secrecy, there's no reason for confidentiality, because you're acting without vested interests in the interests of Ontarians. I believe that's the way it should have been conducted.

Mrs. Lisa Gretzky: What do you think would strengthen Bill 166 as far as protecting consumers? I will tell you that I have had constituents email me, call me and come into my office. I had one constituent, Gay—I won't say her last name. Gay came in with a stack of papers like this over issues she had over her condo that was built and the fact that Tarion was just—basically, she said, their intention was to deny, deny, deny everything. They actually, in her words, attacked her every time she tried to come forward with an issue. They said that she was just being problematic, alluding to the fact that maybe she's making things up.

This is a body that's actually supposed to help consumers. What do you think would strengthen Bill 166 as far as protecting consumers, who take a substantial

amount of money and risk when purchasing a home? What do you think would help strengthen Bill 166?

Ms. Barbara Captijn: Well, I think we have to look at the judge's review and follow his recommendations. The taxpayers paid \$750,000 for this. It took a year to complete that. There are 37 recommendations which all point toward consumer protection. Dispute resolution would have been handled in the multi-provider model by independent adjudicators within these multi-provider models. I don't think we need to rewrite the judge's report. Whose knowledge in this room can trump that of that seasoned judge? So to answer your question—

The Chair (Mr. Peter Tabuns): With that, I'm sorry to say, we're out of time.

Ms. Barbara Captijn: Thank you.

ONTARIO BUILDING OFFICIALS ASSOCIATION

The Chair (Mr. Peter Tabuns): Our next presentation is the Ontario Building Officials Association: Matt Farrell and Aubrey LeBlanc. Gentlemen, if you can identify yourselves for Hansard when you speak, and would you speak directly into the microphone so we have a good, strong record.

Mr. Matt Farrell: My name is Matt Farrell. I'm the president of the Ontario Building Officials Association.

Mr. Aubrey LeBlanc: Aubrey LeBlanc. I'm the chief administrative officer of the OBOA.

Mr. Matt Farrell: I should also introduce myself as the chief building official for the township of Huron-Kinloss, which is in Bruce county. I am joined as well by Aubrey, our administrator.

Most of the municipal building officials in Ontario—plans examiners, field inspectors, chief building officials—are members of the association. We represent the profession with government and other partner associations, and we train and certify building officials so they can properly administer and enforce the Ontario building code. We are obligated to act independently of any political or industry influences and our primary responsibility is protecting the health and safety of the public and, ultimately, the consumers. These responsibilities tie into the multitude of applicable statutes which are linked to the municipal building permit process, where permitting acts as a gatekeeper for compliance with other statutes.

The Ontario New Home Warranties Plan Act is one of those applicable laws. As such, we are very involved with the Tarion Warranty Corp. and both predecessors, HUDAC and the Ontario New Home Warranty Program, and have been for 40 years.

The warranty statute and the Ontario building code were both enacted in the mid-1970s. Those acts are linked formally, and building officials work closely with Tarion officials in several ways as part of the larger building sector. We share communications with common stakeholders, manage illegal building jointly—and I've been working on a pilot program with Tarion over the last few years to help reduce illegal building that's occur-

ring—and are exposed to similar complaints and risk about new home construction. Therefore, the operational and financial risk and reputation of Tarion and municipalities are strongly linked.

In terms of the draft legislation, we generally support the retention of the current model of Tarion providing both regulatory and warranty roles, so we oppose the creation of two delegated administrative authorities. We carried this message to Justice Cunningham during his review and to the Ministry of Government and Consumer Services when participating as part of the stakeholder consultation group this summer, which wrestled with the reality of how the two proposed DAAs would co-operate in unison for a collective purpose.

The Tarion model is sophisticated, even if there are flaws in its rules, policy tolerances and governance model, all of which can be improved with less drama and disturbance. Today, Tarion is able to minimize initial risk through various mechanisms, such as control of training and qualification of builders and vendors, having legally binding vendor and builder agreements, and having a system of performance standards and rules. They can mitigate operational risk as homes are built and sold through requirements for builder performance and an escalating system of dispute resolution with the powers of remediation and restitution when risk or wrongdoing continues to exist.

Ultimately, Tarion can remediate through issuing orders to repair and direct payment to claimants. To carve this up is to weaken the system, which exists to provide for fair outcomes but also provides the capability to balance how the risk plays out. The organization has wide latitude to get things done and minimize unnecessary negative consequences.

To be frank, the Ontario New Home Warranties Plan Act, as an instrument of public policy, intersects with a marketplace in which Tarion or any successor structure must exert its power and influence to optimize several market forces: consumer rights, builder rights, economic forces, affordability policies of government, the supply of housing, and other policy categories that are unstated but extremely affected by what Tarion does. In fact, Tarion is a key public policy arbiter of the conflicting forces of demand for housing and the quality of supply, in addition to providing consumer protection to individual shoppers, buyers and owners.

Tarion's risk management model is a very important part of the broader new home risk management model, which itself is an integration of several statutes, regulators, insurers, financial institutions, professional bodies, industry associations, practitioners, trades, governments, manufacturers and codes and standards organizations. Tarion has contributed much to the balance and harmony of this larger system, and these legislative changes have not been examined in that light. To divide this model among multiple players changes everyone's role and makes Tarion less nimble and effective in responding to complaints.

Consumer input is supposedly driving a lot of the changes this legislation represents. We note, however,

that there are several expressions of the consumer voice and that they do not agree on the risks and remedies. For example, while all consumer groups favour dealing with issues of perceived builder influence over Tarion, some are worried, as are we, that the stand-alone single warranty provider model will now be easier to replace with a competitive insurance model such as what has emerged in British Columbia. Consumers do not universally support the idea of giving builders the ability to shop around for an insurance provider of choice, as choice will not give the home buyers the same level of service and protection that they currently enjoy.

To conclude, we believe there are operational changes that can improve the optics, impact and success of the Tarion model. These include governance reform and the level of service and coverage provided by the warranty and claims process—

The Chair (Mr. Peter Tabuns): I'm sorry to say that you're out of time.

Mr. Matt Farrell: Thank you.

The Chair (Mr. Peter Tabuns): We go first to the official opposition: Mr. Hillier.

Mr. Randy Hillier: Thank you for being here today.

First off, I have to ask you this: I find it very strange and maybe even bizarre that the Ontario building officials are here advocating for the retention of the status quo. I find that quite strange. Generally, we'd expect you to be here proposing amendments to the bill, not taking a step backwards and disregarding the review by Justice Cunningham and all the concerns raised by consumers over the years that necessitated it.

Maybe you could just explain: What is the motivation here to come and be an advocate for Tarion on this bill for the Ontario building officials?

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Mr. Matt Farrell: We're generally advocating on the protection of public rights, and Tarion is a partner with building officials and the municipalities in doing that. We generally do support many of the recommendations in Justice Cunningham's report. We just generally—

Mr. Randy Hillier: Not from the sound of it.

Mr. Matt Farrell: Well, we expressed our criticisms as well on what we found was unnecessary. We do support the need for governance reform and changes in the policy, but to divide that into two separate entities confuses the entire new home building process.

Mr. Randy Hillier: And to dismiss the multi-service-provider model? There's quite an astonishing—you know, I see the Ontario Building Officials Association as non-partisan and not as a group that is here to parrot or to advocate for another delegated administrative authority in the province.

Anyway, I'll leave it at that, and pass it over to my colleague.

The Chair (Mr. Peter Tabuns): Mr. McDonnell.

Mr. Jim McDonnell: I just have some concern. You seem to discount the consumer complaints, but we see them all the time—consumers coming in and not having a choice. Really, Tarion has, right now, a monopoly on

the whole insurance in building. Justice Cunningham spent considerable time talking to different groups, and it came out that that's a problem, that it needed to be split. We agree with that. We certainly would have gone further and believe that consumers having a choice in who their insurer is just reasonable and something that we allow for everywhere else. We're wondering why we wouldn't go that way in a home. I'm just wondering why you would be against that type of recommendation, where they should have the choice to choose who they want to warranty their home.

Mr. Aubrey LeBlanc: The sad part of all of this—it's Aubrey LeBlanc speaking—is that all of us agree, I think, at the level of consumer protection; we disagree on the mechanism. In our case, we particularly disagree about whether this change of model was well thought through or not. Our concern is that you replace one set of problems with another.

We are, whether one likes it or not, inextricably tied, as many other organisations are—architects, engineers, other statutes of the province—together in a single system that is connected, legally and otherwise. I don't know whether you know about the concept of applicable law and the fact that every permit that is issued ties into lots of other provincial legislation. We're part of a larger system. We do not believe that this model was well researched in terms of its own characteristics. So, yes, we're a little cautious. Our view is to stick with what you know and fix it before you replace it with a change in model, which is a much bigger issue.

The Chair (Mr. Peter Tabuns): And with that, I'm sorry to say that you're out of time.

We go to the third party: Ms. Gretzky.

Mrs. Lisa Gretzky: As I shared earlier, I have a constituent who came in, and she is, by far, not alone as far as people in this province who have purchased. I want to say that not all builders are bad people; there are some great builders out there—probably the majority of builders. But she had a laundry list of issues with the build of her home.

I just want to ask you: If you go out and pick out a specific bathtub to go into your home—a higher-end one, say, an air tub—you're quoted a certain amount of dollars for that by a builder: "This is going to be the cost to you." Then it comes and it's not what you paid for or the builder says, "Well, I made a mistake in my quote. I have it, but you can't have it until you give me more money." Do you think that's fair and reasonable when somebody has been quoted a different price?

Mr. Aubrey LeBlanc: No, I don't, and there are rules about illegal substitutions in the act.

Mrs. Lisa Gretzky: Okay. So then, say, that tub, or whatever it may be, is then installed and it's damaged. Do you think it's fair and reasonable for the consumer to say, "I don't want a damaged item. I paid for a new item. I don't want a damaged item"? Do you think that's fair?

Mr. Aubrey LeBlanc: In general, no, I don't think it's fair. So we agree on the consumer protection—

Mrs. Lisa Gretzky: No, no, I'm saying—sorry. Is it fair for the consumer to say you've installed something that's damaged and—

Mr. Aubrey LeBlanc: The consumer has—yes.

Mrs. Lisa Gretzky: Okay. Do you think it's fair and reasonable, then, to go to a body like Tarion and say, "These are the troubles that I'm having"—and trust me, they were numerous—and for Tarion to then say, "Well, that's too bad for you," or say, "You're just a troublemaker. You've come forward with far too many concerns, so we're just going to say that you're making things up and you're a troublemaker"? Do you think it's fair for that to happen?

Mr. Aubrey LeBlanc: If that's all that happened and as described, no, I don't think it's fair.

Mrs. Lisa Gretzky: Okay. I understand you don't like the way Bill 166—the model that they are proposing. You're saying you'd like to see the status quo and maybe tweak what's there. What exactly do you see if Bill 166 didn't go through as is? If they decided that they were going to leave Tarion in place and just try to fix what's there, what do you think needs to change in order to make it stronger for consumers?

Mr. Aubrey LeBlanc: Our view is that you can do everything that the justice recommended without carving it up into two pieces. There's another method. This is going to be at no extra cost to the marketplace as well. We don't believe that's actually going to transpire, because the minute you create two items—and we agree with the consumer groups on this issue. If you create two, you're also magnifying costs.

We agree with all of the protections. There are clearly some optics about capture by the industry. There's governance reform; there are all sorts of coverages that can be changed and extended. You can change the claims system, make it more consumer-friendly and improve it always. But don't throw out the model which allows you, cradle to grave, to manage the process and to use whatever is appropriate to cause things to happen.

Mrs. Lisa Gretzky: Then do you feel it's—

The Chair (Mr. Peter Tabuns): Mrs. Gretzky, I'm sorry to say you're out of time.

We go to the government: Mr. Dickson.

Mr. Joe Dickson: I'm going to speak to you two gentlemen, and I might look to the lady across the way, Barbara, to raise her hand if she agrees or disagrees on something.

I was elected at the council level, deputy mayor. I think perhaps only MPP McMeekin was there as long as me. I lived with six builders. I lived with Tribute Communities, Coghlan, John Boddy, Heron, Sandbury, Heathwood—major builders. I introduced myself to each builder when they came to the municipality. I said, "I want the name, the address, the phone number, your cell number. You and I have an arrangement, because you're in my area. Unless I get a return phone call from you personally within one hour, you may never want to work here again." It was a pretty clear understanding of where we were, and they were most receptive.

I also understand because I had four or five out of several thousand homes that were not appropriate. I went to them with Tarion and they made a number of adjustments, but in my opinion, they didn't do everything that they should have done. So 98% good, 1% or 2% bad. I mean, class act—I got immediate responses from every single corporate owner. But I understand what the lady is saying.

My question to you is, what can you do to help this lady who has that problem and to make it happen never again? How can you do that leaving Tarion in its current position?

If you want to change Tarion's position, tell me that.

Mr. Aubrey LeBlanc: You change the coverage and you change the rules. Part of the recommendation was that government accept a larger policy role, and they're doing that. In terms of coverages, in terms of the methodology of settling claims, all of that can happen on the existing platform without creating a whole bunch of new issues that go with splitting it in half.

Mr. Joe Dickson: Are you telling me, then, you can no longer guarantee that the problem that the young lady had can be resolved for the future?

Mr. Aubrey LeBlanc: I think there's no evidence it will be any better under this model.

Mr. Joe Dickson: Sorry. Say it again?

Mr. Aubrey LeBlanc: There's no evidence that it will be any better under the new model than under the old.

Mr. Joe Dickson: There's no evidence that it will be any better. Do you think you can help make it any better?

Mr. Aubrey LeBlanc: Yes, and that's our position: Change policies, change procedures and do a lot of the things that are recommended, but structural change produces a lot of issues.

The Chair (Mr. Peter Tabuns): I'm sorry to say that we're out of time. Thank you very much for your presentation.

CANADIANS FOR PROPERLY BUILT HOMES

The Chair (Mr. Peter Tabuns): We go on to the next presentation: Canadians for Properly Built Homes, Karen Somerville. Ms. Somerville? Please have a seat. If you would start off by introducing yourself for Hansard. Please speak straight into the mike as clearly as you can.

Dr. Karen Somerville: All right. Good afternoon, everyone. I'm Karen Somerville, president of Canadians for Properly Built Homes. I appreciate the opportunity to be here today.

I'm going to start by telling you about one of the many people suffering due to the inadequacies of the current legislation and the current model. Here is a picture of Daniel Emery. Here is an abbreviated story that Daniel Emery experienced, based on what he told us.

In 2007, he bought a newly built home in Port Dover. There was no occupancy permit. He quickly found serious code defects, including Ontario building code violations. He contacted Tarion, and he understood that

Tarion would help him. He waited for over three years for Tarion to help. Tarion did not help him.

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His insurance was cancelled due to the construction defects and mould in his home. Without insurance, Daniel could not get his mortgage renewed. Without a mortgage, his home went into foreclosure. In 2011, Daniel Emery became homeless. Daniel is still desperately seeking compensation from Tarion today.

Bill 166 will do nothing to prevent a situation like Daniel's from happening again. Bill 166 does not provide compensation for Daniel or other families who feel that they have been wronged by Tarion. Again, Daniel's story is just one example of many, many across Ontario.

So what changes need to be made to Bill 166? I'm going to start off by highlighting one that has already been discussed today, and that's eliminating Tarion's monopoly, as Justice Cunningham recommended, and giving Ontarians a choice, like most other jurisdictions.

The government is now saying that eliminating the monopoly still needs research, but this has been researched for decades. A couple of examples: In 2000, the Building Regulatory Reform Advisory Group's chair and co-chair recommended a competitive model—17 years ago. In 2001, in a study of home builder associations—and this was done by the Canadian Home Builders' Association—they found that most home builders believe that the industry should support third-party warranties offered by private insurance companies rather than a single warranty provider. A quote from that study was, "Competition makes a fair marketplace."

Given the Wynne government's focus on fairness, and given all of the research that has already been conducted, we wonder why ending Tarion's monopoly is still being debated and stalled. To be clear, research shows that both industry and consumers want choice, not a monopoly, and as you know, last year, Justice Cunningham recommended ending Tarion's monopoly.

When you have a competitive model, home purchasers can use the warranty provider as a purchase criterion when they select their builder. In the package that we've distributed today, you'll find out how BC works. BC has steered away from a monopoly model.

If Tarion's monopoly is not ended, we have some recommendations for your consideration:

(1) Make new home warranties optional. If people see value, they will purchase it. No one should be forced to purchase from a monopoly.

(2) Remove all builders and builders' representatives from the board of Tarion. Instead, establish an advisory board made up of builders and their representatives to provide advice to Tarion. Justice Cunningham raised serious issues of conflicts of interest and perceived conflicts of interest. From a governance perspective, builders and their representatives on the Tarion board is an obvious conflict of interest.

(3) Provide both the Auditor General of Ontario and the Ombudsman of Ontario with jurisdiction over Tarion.

(4) Effective immediately, have Tarion's internal ombudsperson office report to the government of Ontario rather than being on the Tarion payroll.

(5) Ensure that Tarion is part of the sunshine list that makes salaries public.

(6) Expedite Bill 166 and the related regulations so that they come into force in the very near future, not 2020.

People are suffering today. There needs to be a sense of urgency. A recent headline in the Toronto Star said, "Delayed Action on Consumer Protection for Home-owners a Sad Reflection on Provincial Government." That article went on to note that "the Ontario government acted with speed in imposing a new non-resident tax on real estate purchases."

Under both scenarios, whether it be a monopoly or competitive, we have two further recommendations:

(1) Clearly define what "properly built homes" means. That's in the bill. For example, does that mean the minimum of the Ontario building code? There needs to be a definition.

(2) Establish an independent body to review claims rejected by Tarion for those consumers, like Daniel Emery, who want this option. We see that Tarion has considerable surplus available for claim reconsideration. For example, Tarion's most recent financials show over half a billion dollars in investments, and in 2016, Tarion earned more than \$33 million in investment income alone.

I want to end by just reminding everyone that this is very serious. There are many consumers suffering today; for example, seniors suffering in homes that do not meet the building code.

The Chair (Mr. Peter Tabuns): Ms. Somerville, I'm sorry. You are out of time.

Dr. Karen Somerville: Thank you.

The Chair (Mr. Peter Tabuns): We go first to the third party: Ms. Gretzky.

Mrs. Lisa Gretzky: I want to thank you for coming here today. You would probably have been in the room when I spoke about one particular constituent I have, Gay. When she started sending pictures and submitting information regarding several issues that she had in her new home, Tarion actually sent her a letter back and said she was being greedy—for trying to fight for what she had paid for.

What's interesting to me is that you had talked about an independent body to review any of the claim denials by Tarion. How would you see that particular independent body being made up? Who would sit on that and how do you see that actually playing out as far as handling appeals?

Dr. Karen Somerville: Fully independent is absolutely key. The ombudsperson in Tarion is not fully independent. You need knowledgeable people there familiar with the act. I'm not proposing a free-for-all. It needs to be fair. It needs to be independent. It could be, for example, one person or maybe a panel of two or three people to whom homeowners can present claims that

have been rejected by Tarion. So knowledgeable and independent are the two criteria.

Mrs. Lisa Gretzky: Do you see those people being appointed by the government, or how would they be—who would decide who those people would be?

Dr. Karen Somerville: It could be. I think that we need to trust our government. We need to trust that they would do the right thing from a consumer protection perspective. We wouldn't have a problem if the government appointed people to do that, as long as they were qualified, knowledgeable and independent.

Mrs. Lisa Gretzky: Do you think that it would be helpful to have very specific timelines as far as the appeal process, or do you see that taking—just kind of let it roll out as it does? Or do you think there should be a prescribed amount of time for the appeal to be done in order to make a decision as to whether a claim is valid or not?

Dr. Karen Somerville: I do think that there needs to be a sense of urgency on this. It needs to be thorough, but, yes, it shouldn't drag on. Many of these people have been suffering for many years, so a reasonable period of time, whatever is deemed to be reasonable—I don't know; three months, six months. But many consumers have lost hope. They just don't bother even writing to MPPs now. They see no sense in doing that. We need to give Ontarians a reason to feel that they are being heard and that this is being fairly considered. Many people feel—

The Chair (Mr. Peter Tabuns): And with that, I'm sorry to say, you're out of time. We go to the government. Who will be asking questions on behalf of the government? Ms. Malhi.

Ms. Harinder Malhi: Thank you for your presentation. When we look at Bill 166, it introduces a number of changes to improve protections for the purchasers and owners of newly built homes. Out of the protections provided for in Bill 166, what do you feel are the most important for consumers, of the ones that we have introduced in the bill?

Dr. Karen Somerville: We do support a separate body to regulate builders. We do think that's a good idea. That's a step in the right direction. Justice Cunningham recommended that as well. That will be significant, but it's not nearly enough. That's probably, in our opinion, the most significant change that we would see through Bill 166.

Ms. Harinder Malhi: What additional measures would help the proposed warranty authority resolve disputes between new home builders and vendors and homeowners? What more do you think—

Dr. Karen Somerville: Well, and I mentioned this in my presentation, I do believe it starts at the top, with the governance of Tarion. The governance helps to create the culture of the organization. Right now, the Tarion board is builder-heavy, and that influences what's going on in that organization and how claims are received and how claims are reviewed. Clearly, the governance model really has to be seriously reconsidered. As you may have

heard me mention, we don't see any need for builders to be on the board of an organization that is for consumer protection. If you need builder input—and, yes, builder input is very important—that can be done through an advisory board providing advice. Really starting at the top with that governance function is one of the key considerations we would echo.

1510

Ms. Harinder Malhi: Okay, thank you.

Dr. Karen Somerville: You're welcome.

The Chair (Mr. Peter Tabuns): No further questions? To the opposition: Mr. McDonell.

Mr. Jim McDonell: It's surprising, I guess. We heard the Ontario building inspectors talking about their thought that it could remain as one entity. That was a bit of a surprise to us. Any comments on that? We haven't heard too many people say that so far.

Dr. Karen Somerville: I was quite surprised by that as well, and I listened to that. I believe that one of the gentlemen who presented is a past president of the Tarion Warranty Corp., or ONHWP, as it was known then. So I wonder—he's obviously very familiar with the workings of Tarion. There have been changes in Tarion over the years—not a lot—so that thought crossed my mind as I heard that view being shared.

Mr. Jim McDonell: I know the government went through and they paid a fairly hefty price for this report by Justice Cunningham. They then called together a quiet group during the summer to review the report, but ruled many of the recommendations out of order, which seems odd. I believe that very few in the way of consumer advocates were on the committee. Most of them were tied to the building industry, not to the consumer side, which really this bill is all about.

Dr. Karen Somerville: Correct.

Mr. Jim McDonell: I guess one of the most vocal aspects of these recommendations was the multi-vendor, and that's not there. Any comments on that?

Dr. Karen Somerville: We're very disappointed, obviously. I mention in my presentation the research that's been conducted—I cited back to the year 2000. I could have given you more if I had had more time.

Justice Cunningham did a thorough review and, as you may know, in his interim report he included a jurisdictional scan. There were nine jurisdictions considered by Justice Cunningham and his team. Eight out of the nine have avoided a monopoly model. The one jurisdiction that has a monopoly model is Quebec. That's very new, and we don't know how that's going to unfold. But the evidence shows from our research and our perspective that clearly that multi-warranty-provider model is important and critical to the future of Ontario and Ontario's home building.

Mr. Jim McDonell: Yes, because one of the complaints he made was that you're reinventing the wheel, but really you're not. You have the ability to look around at different systems that are working and copy the best of those.

Dr. Karen Somerville: That's right. In the package that I provided for you today, we've mentioned British Columbia and Manitoba. We just went through this with Manitoba.

The Chair (Mr. Peter Tabuns): Ms. Somerville, I'm sorry to say that you're out of time.

Dr. Karen Somerville: All right.

The Chair (Mr. Peter Tabuns): Thank you for your presentation today.

Dr. Karen Somerville: Thank you very much.

CANADIAN ASSOCIATION OF TOUR OPERATORS

The Chair (Mr. Peter Tabuns): Our next presenter is the Canadian Association of Tour Operators, Jeffery Element and Tim Croyle. Gentlemen, good afternoon. Have a seat. When you begin, would you please introduce yourselves for Hansard and please speak into the microphones clearly. Thank you.

Mr. Jeff Element: Good afternoon. My name is Jeff Element, chairman of the Canadian Association of Tour Operators.

Mr. Tim Croyle: And I'm Tim Croyle, the vice-chair of the Canadian Association of Tour Operators.

The Chair (Mr. Peter Tabuns): Please proceed.

Mr. Jeff Element: Thank you very much for taking the time to listen to us this afternoon. We have already made a submission in writing and we've handed out copies today just so we can all be on the same page, so to speak.

We wanted to, firstly, thank you for the bill that has been introduced, and for taking the time to try and advance consumer protection within the travel industry. We do believe that a lot of advancements are being made with this new bill.

Unfortunately, we don't believe that it has maybe gone far enough on the consumer protection side. We're missing out on a great opportunity to truly protect travelling consumers in Ontario. We just wanted to make sure today that you were aware of some of the gaps that are in the current policy and how they are not being addressed in this current revision.

The rules that we currently have are 30 years old and did not contemplate the way business is being operated today, so we need to make sure that we update our rules and regulations on a regular basis. Little steps forward are important, but we are missing out on a huge portion of the industry, and we just wanted, like I said, to make sure you understood the gaps and the limitations that we currently have.

The size of our fund is \$20 million. If there was a real failure with our industry—there's a lot of vertical integration in very large travel companies. The actual amount that would be covered under one failure is \$5 million, and \$2 million for repatriation. The size of many of the travel companies nowadays would far exceed \$5 million and the \$2-million repatriation, which would leave a lot of consumers stranded in destinations,

potentially, or the ones who have not already travelled would potentially receive pennies on the dollar.

I know that at the time something would happen, the government would probably insist upon exceeding those requirements that are put in there—those caps. Even at \$20 million, the size of many of the industry players would more than wipe out the \$20 million in maybe one failure.

We all think, “Oh, things are quite good in the travel industry and quite good in our economy right now.” The world does go through economic cycles—up and down—and while things have been good for many years, at some point there will potentially be a downturn and an opportunity for companies to go bankrupt and strand people.

Firstly, the size of the fund and the caps don’t work for consumer protection; secondly, the other part of our industry is that people pay by credit card. When they pay by credit card, that is ending up being their form of security. Even TICO—the way it operates is that when there is a failure and someone goes to TICO to claim for a refund or whatever, they first are told, “Go to your credit card company,” which does not look highly upon our industry or does not look highly upon our Ontario regulations if we’re sending them to private organizations—credit card companies—to be their protector, I guess, basically, in tougher times.

I know that at different times, credit card companies and their rules have come under scrutiny. We’ve read the rules and regulations and what they promise to consumers, and nowhere do they guarantee that they would refund consumers. They do it as goodwill gestures. If there was a large failure, the chances of them continuing to offer that goodwill gesture for \$20 million or \$30 million or \$40 million would be greatly reduced, so, again, consumers are at great risk. That’s another portion of our industry that we need to consider.

There is one way that we could fix this—and it has been presented, I think, several times in submissions from CATO and other members of the travel industry, and I believe TICO themselves have made submissions—and it’s to have a copay fund.

The Chair (Mr. Peter Tabuns): I’m sorry to say: With that, you’re out of time.

We go first to the government for questions: Ms. Malhi.

Ms. Harinder Malhi: As a national organization, you take part in legislative and regulatory development across the country. What sorts of frameworks do you see in other provinces that work really well?

Mr. Tim Croyle: Maybe I’ll jump in. One of the frameworks we have looked at quite closely is the Quebec framework, which is very similar. The one major difference is that it is a consumer copay: The industry pays as well consumers pay. Their fund is sitting in excess of \$100 million, and they’re in a position to cover any types of failures.

Some of the issues we see with the current set-up is that not all travel products are covered under the rules at

the moment. It’s for air travel and cruise, but if you have in-destination tour operators or hotels that go out of business, then the consumer is not covered. We find it’s very hard for the consumer to understand, under the current rules, what they are covered for.

Ms. Harinder Malhi: Fraud undertaken by a travel salesperson was the number one complaint to the Travel Industry Council of Ontario in 2015-16. Do you think there should be additional measures in Bill 166 to better protect consumers against the risk of fraud?

Mr. Jeff Element: I think transparency is the important part that’s missing; right? People don’t understand what they are covered for and not covered for because they’re not charged for it on their invoices; it’s buried.

If it was a copay model where they paid 0.1%—\$1 per \$1,000—as they have in Quebec, which is a relatively insignificant portion. But it does raise the fact that they are having coverage. They can then question what is covered. They understand the rules and regulations surrounding it. Currently it’s just a big mystery for many consumers, even though TICO tries to educate them the best they can—transparency.

1520

Ms. Harinder Malhi: Okay, thank you again for your presentation.

The Chair (Mr. Peter Tabuns): We go to Mr. Coe.

Mr. Lorne Coe: Thank you for your delegation. Your delegation frequently highlights the actuarial study that was done by Deloitte. You indicate that it was provided to the ministry. To what extent are you satisfied that the findings in that particular study have been weighted and accounted for in the legislation that’s before you?

Mr. Jeff Element: I think it has missed out the big portion, the consumer-funded portion: the copay model, which is the most important part of that actuarial study. So I think it missed the mark.

Mr. Lorne Coe: What explanation did you receive from ministry staff in terms of why it was missing?

Mr. Jeff Element: We have not received an explanation.

Mr. Lorne Coe: You haven’t received an explanation yet?

Mr. Jeff Element: No.

Mr. Lorne Coe: And you submitted it in June?

Mr. Jeff Element: Yes. The actuarial report was actually submitted by TICO, and we made our own submissions in support and suggesting the same.

Mr. Lorne Coe: Yes, I understand. That actuarial study: Is that something that you’d be willing to share with committee members?

Mr. Jeff Element: Yes, and I believe TICO has already shared it with policy people earlier this year. It’s actually not CATO’s report; it’s TICO, which is—

Mr. Lorne Coe: I haven’t received it. I think it would be of value to have a look at it. Thank you.

The Chair (Mr. Peter Tabuns): Mr. McDonell?

Mr. Jim McDonell: To get access to the travel compensation fund, what does the consumer have to do?

Mr. Jeff Element: First there has to be a failure. There are specific items that would be covered. So you would go to TICO first. TICO then would direct you to the credit card company and prove that you have not received a charge-back from your credit card company and have not been refunded by your credit card company. Then you'd go back to TICO, fill in your forms and start your claims process, which could take anywhere from—if it's a bigger failure and they have to wait until all claims are in—six months. Then they determine how much they're going to start to pay out.

Mr. Tim Croyle: And that, I think, is where some of the confusion comes to the consumers, because it only covers certain travel products. It's not all of the travel that could be covered. Now we see a lot of people who are booking online travel that is not necessarily through TICO registrants. It has to be through a TICO registrant. If someone books through a non-TICO registrant, then they are not covered.

Mr. Jeff Element: Most online travel retailers are not TICO-registered. Expedia is one that is located here, but many are not. Even if they book with a tour operator here in Ontario, they would not be covered. If that tour operator went bankrupt, if they booked online through an online travel agent, they would not be covered.

Mr. Jim McDonell: And when you're going through a credit card company, you're assuming it's being done within 30 days, but really you should be reimbursed. It shouldn't be left up to the credit card companies to handle the problem for you.

Mr. Jeff Element: There is no law saying that the credit card company has to refund the money.

Mr. Jim McDonell: And maybe don't wait for them to do it, without losing money themselves.

Mr. Tim Croyle: In the event of a large failure similar to the one of Monarch in the UK, we don't believe the credit card companies would step up and cover that magnitude of refund.

The Chair (Mr. Peter Tabuns): With that, I'm sorry to say: We're out of time. We go to Ms. Gretzky.

Mrs. Lisa Gretzky: You were just saying that a lot of online travel booking is not covered by this consumer protection fund. You also mentioned transparency. Is there a requirement for them to put on their website somewhere where it is very obvious to the people booking through them that if there is some sort of issue—a failure, I believe you called it—they would not be protected through this compensation fund?

Mr. Jeff Element: TICO does not have the authority to tell a company out of the US or out of the Caribbean or out of Europe what to put on their websites.

Mrs. Lisa Gretzky: But are you aware of any Canadian sites or, specifically, sites based out of Ontario for travel booking that would not be covered under this?

Mr. Jeff Element: No. If it's an Ontario site, then it would be required to be registered with TICO. On our websites, we all have that we're registered and what our registration number is. But that's only for the Ontario sites. Lack of it being there does not tell people that

they're not covered or, in any way, highlight to them that they're not being covered. If they see it, then they know they are covered.

Mrs. Lisa Gretzky: Okay. Then you had mentioned that the length of the process for someone filing a claim can vary, based on, you said, the degree of the failure. What would be considered a minor failure, compared to a larger failure? What would take less time and what would take more time?

Mr. Jeff Element: When TICO goes in and does an estimate that the failure, in total, is going to cost \$200,000, and it doesn't reach the \$5-million cap, they can start paying out claims right away, up to the maximum of \$5,000 per person.

If TICO goes in and the estimate is that the failure is going to cost \$10 million, they only have a \$5-million cap, so they have to wait until they get all of their claims and then they will pay cents on the dollar.

Mrs. Lisa Gretzky: That's divided out. Okay.

Mr. Tim Croyle: A large failure would be the failure of a major tour operator, where potentially tens of thousands of people would either be stranded in-destination or would have paid for a vacation trip that they will no longer receive.

Mrs. Lisa Gretzky: Okay. Thank you.

The Chair (Mr. Peter Tabuns): And with that, we're out of time. Gentlemen, thank you very much. We appreciate your presentation.

Mr. Tim Croyle: Thank you for the opportunity.

Mr. Jeff Element: Thank you.

The Chair (Mr. Peter Tabuns): Members of the committee, our next speaker has cancelled, so we will recess until 3:45, when we will resume.

The committee recessed from 1526 to 1544.

ASSOCIATION OF CANADIAN TRAVEL AGENCIES

The Chair (Mr. Peter Tabuns): We're back in session, for those who had gotten a bit drowsy. We now have the Association of Canadian Travel Agencies: Thank you for appearing here today. It would be useful if, before you speak, you introduce yourselves so it's recorded accurately in Hansard. Please speak into the microphones and project, just to make sure we have a good audio recording. With that, it's all yours.

Ms. Wendy Paradis: Hi. My name is Wendy Paradis. I'm the president of ACTA. We're the Association of Canadian Travel Agencies. We represent travel agencies across the country, and 80% of our members write 80% of the travel agency transactions in Canada. Some 50% of all travel agencies and almost all head offices for travel companies are located in the province of Ontario. Tens of thousands of people are employed in this industry. The travel industry in Ontario represents over \$15 billion in sales, so a significant amount of travellers and economic impact to our province.

The ACTA team has been working diligently on the Travel Industry Act review for the past 18 months.

Although we are supportive of some of the proposals in the new bill, Bill 166 falls short on the most critical aspect of consumer protection for Ontario: the compensation fund.

As our colleague said earlier, we have been waiting for 30 years for this review. When this act was created, the Internet did not exist.

Our number one recommendation—through many consultations, through many submissions directly to the government, directly to the regulator and now to your group—is that for us to have consumer protection with an adequate funding model, there need to be consumer contributions—in other words, users pay into the fund, in partnership with the travel industry.

Currently, the fund is \$20 million, and it is not adequate to handle a major failure.

The airlines are not regulated by the province. They're regulated by the federal government, so they do not contribute to the fund.

We cannot rely on credit card companies because, as their conditions in fine print show—and as we've personally experienced in travel agencies, in other failures—they will not come to the table if there is a major failure.

Travel agencies don't hold on to the money. We pass the consumers' money on to the suppliers.

There is a solution. A best practice, although not perfect, is in Quebec. As recently as last week, when we got the response that there was no consumer-contribution model in the act, I called travel agencies across Quebec and said, "What is your experience?" The experience is positive: They really have no concern with paying a minimum amount of money for their own protection.

I'm going to hand it over to Richard for some other examples.

Mr. Richard Vanderlubbe: I'm Richard Vanderlubbe. I'm a travel agency owner in Hamilton and representing the association.

Just to tell you about a recent failure in the UK—Monarch Airlines—110,000 people were in-destination. In the UK, there's a user-pay scheme. They have £400 million in the fund. They chartered 700 planes and went and pulled those 110,000 people out.

Our fund for repatriation, to pull Ontarians out of destination in the event of a bankruptcy, would probably do 4,000 to 6,000. It's woefully deficient. The Deloitte report recommended a fund of a \$50-million contribution by industry and consumers, and an additional \$50 million in reinsurance to actually cover the risk.

We're advocating that consumers contribute—not the taxpayer, but the travelling public, along with registrants—to fund this. This is the case in Quebec, it's the case in the UK and it's the case in the EU in many countries. It's a well-established model.

Lisa Gretzky asked—the very fee itself—you have to realize that we will be collecting, let's say, \$1 per \$1,000, and our airline suppliers that sell direct to consumers will not be. That is one way that the consumer will be able to tell whether they're covered or whether they're not.

There's also a fairness issue for travel agencies having to cover the risk of an airline failure. If you think about

this, these companies are global companies. They can easily bankrupt themselves in one jurisdiction and not another. We've seen a lot of volatility in the industry. Essentially, right now, the risk is entirely on the travel agency community to pay into the contributions to the fund, and that's why it's only at \$5 million.

If a large airline went down, there would be cents on the dollar. This idea that consumers are covered is a bit of a lie, in the sense of a large failure.

The Chair (Mr. Peter Tabuns): Thank you very much.

We go to Ms. Gretzky.

Mrs. Lisa Gretzky: You had mentioned consumers contributing. Can you tell me what that would look like to a consumer, cost-wise, to be able to contribute, as opposed to what I'm going to call a vendor or a travel agent?

Mr. Richard Vanderlubbe: Today in Quebec, it's pretty much \$1 per \$1,000. It started at \$4 per \$1,000 and worked its way down. They actually have too much money in their fund. We would argue that that's a bad model to go, because they continue to build the fund and there's no mechanism to reduce those fees.

1550

We think we can learn from Quebec that it needs to be funded to a certain level. The \$1-per-\$1,000 rate would probably do it. Beyond that point, once there was enough money in the fund, we probably wouldn't need to continue to collect or we could reduce the amount to a very small amount. But the idea here is to have consumers contribute with registrants into the fund for the failure of airlines that aren't paying in.

Mrs. Lisa Gretzky: Okay. So then how much would the travel agencies pay into the fund?

Mr. Richard Vanderlubbe: Today, we're paying in about 25 cents per \$1,000. Again, that's coming out of extremely slim margins, competing with the airlines at the same time. We're actually competing with our own suppliers in this endeavour. Right now, it would be the registrants that are left over that would have to replenish that fund.

Mrs. Lisa Gretzky: Would you see there being a need for the 25-cents-per-\$1,000 rate to be increased, if you did the \$1-per-\$1,000 for the consumer and the 25-cents-per-\$1,000 for travel agents? That's sustainable?

Mr. Richard Vanderlubbe: It's likely not necessary. The question would be about how much to collect and then to stop or reduce it as some point. What we're looking for in the legislation—we haven't had an opportunity to get this legislation changed for so long. As long as the enabling legislation is in there, I think the government of the day and how that's set could determine what the optimal balance is. Surely, we don't want to be like Quebec and have too much money in the fund. But right now, we're woefully deficient.

Mrs. Lisa Gretzky: I guess I'm just trying to wrap my head around the fact that, as a consumer, if I book travel, I've already put money up front, and now I have to put up more money to make sure that—if something

happens and a company goes bankrupt, I'm now paying more for a trip I've already paid for. I guess that's where I'm trying to find out what the balance is—

The Chair (Mr. Peter Tabuns): Ms. Gretzky, I'm sorry to say, you're out of time.

We go to the government: Mr. Dickson.

Mr. Joe Dickson: Good afternoon, President Paradis and colleagues. I have a couple of quick questions.

As a national organization, you take part in legislative and regulatory development across the country. What sort of frameworks do you see in some other provinces that would assist us here in Ontario?

Ms. Wendy Paradis: In the last 18 months, there has been significant research in other models not only in Canada, but in other places in the world. After reviewing those models, I will say that the Quebec model, although not perfect, has a lot of the answers, and that is what we're promoting on behalf of consumers in Ontario.

Mr. Ted McMeekin: It's \$1 per \$1,000.

Ms. Wendy Paradis: I think that the Quebec model is \$1 per \$1,000 and, to Richard's point, I think that how it all works out and what the exact amounts are—I don't think that needs to be part of the legislation. We need to figure that out. We know it works.

What we need to make sure happens with Bill 166 is that there is a mechanism there that actually allows us to start working in that way.

Mr. Joe Dickson: Fraud undertaken by the travel salesperson was the number one complaint to the Travel Industry Council of Ontario in 2015-16. Do you want to see additional measures to Bill 166 to better protect consumers against the opportunity for risk of fraud?

Ms. Wendy Paradis: Absolutely, fraud is a significant issue in travel and globally. We definitely need to look at consumer protection around fraud, yes.

Mr. Richard Vanderlubbe: The registration of individuals would go a long way toward identifying people who are illegitimate by seeing who's actually legitimate, right? Today, it's the registrant business that's disclosed. But actually having the individual disclosed will allow consumers the ability to see who's not registered. That's a provision in the new legislation.

Mr. Joe Dickson: Thank you very much.

The Chair (Mr. Peter Tabuns): The official opposition: Mr. McDonell.

Mr. Jim McDonell: Thanks for coming out here. You're basically recommending that the government of the day sets the appropriate fund amount and regulation to achieve that. Maybe it has to be a little higher to start with until you get that fund built up, but once you're maintaining a fund there's less money required. So \$1 or \$1.50 or \$2 on \$1,000 is not an onerous amount for the protection you get.

Mr. Richard Vanderlubbe: It's not. I think the real question for this committee on social policy is: Is this the role of government to help consumers in the event of these failures? If it is, what's the most equitable way of doing it and making sure that it's properly funded? If it's not, then we should dial this back and say, "Why is this

fund covering airlines and cruise lines that are not contributing to it?" We're putting that burden on Ontario business. In fact, what we have today—without the ability to have consumers pay—is, we're not quite protecting consumers, and we're actually still leaving a burden. In a way, in the large failures, it's deficient.

Ms. Wendy Paradis: I think that, in the past when there have been very large failures and there has been an assumption that there was consumer protection, for those of us who work in the industry and had those families or honeymooners or people who had saved for five years to go on their 25th anniversary—and there are thousands upon thousands of them affected all in the same minute—it has been quite dramatic and disturbing for the consumer. Then, the government, with that outcry, has really felt the need to step in.

What we're asking for now is, instead of reacting when there's a crisis, let's take care of it in this bill and put the mechanism in place so that we can figure it out, so that we're not running into those crises when the next major failure happens.

Mr. Jim McDonell: We have the example of the province doing it and the fund is working relatively well, so it's not like we have to go back and reinvent anything.

Ms. Wendy Paradis: Right.

Mr. Jim McDonell: It's interesting that some of these things can happen. I know of a case not too long ago where a group going down to Brazil was landing in Haiti for fuel or something and, on the way down, they hit a goose or something and had to stay overnight. Then the earthquake hit, so they're stuck there. It can happen as somebody's fault or it can happen as an act of God. Those things happen, so there need to be some protections in place.

The Chair (Mr. Peter Tabuns): Mr. McDonell, you're out of time, I'm afraid.

Thank you very much for your presentation today.

STUBHUB

The Chair (Mr. Peter Tabuns): Our next presenter is StubHub: Jeff Poirier and Laura Dooley. As you've heard, if you could introduce yourselves for Hansard and then speak very clearly into the mike. Thank you very much. Please proceed.

Ms. Laura Dooley: Thank you, Mr. Chair and members of the committee. My name is Laura Dooley. I'm the senior manager for government relations for eBay.

Mr. Jeff Poirier: Good afternoon, Mr. Chair and members of the committee. My name is Jeff Poirier. I'm the general manager for music and theatre for StubHub here in North America.

StubHub is the world's largest ticket marketplace. We are a subsidiary of eBay and a proud corporate citizen of Ontario, with over 200 employees here in Toronto alone. We provide a secure platform for third parties to buy and sell tickets. In Ontario, we have over one million registered users and are proud partners, as well, of the Ottawa Sports and Entertainment Group, as well as the Toronto Blue Jays.

When StubHub was created in 2000, we revolutionized the ticket marketplace. We brought ticket sales that were once off-line and brought them online with safety, transparency and a great customer experience. StubHub provides this safe and transparent platform in over 48 countries. Policy-makers have recognized the advancements in this market and have updated the antiquated laws regulating ticket resales. The vast majority of jurisdictions in Canada and the US allow for ticket resales to occur at the market rate and market value.

StubHub's industry-leading FanProtect guarantee is the hallmark of our business. We were the first to create such a guarantee. In the rare instances, which happen far, far less than 1% of the time—this isn't just fraud; this is any issue with the ticket purchase—the transaction is covered by our FanProtect guarantee. We will make all efforts to get that fan into the event with an equal or better ticket. In the event that we cannot, we will give them a full refund, inclusive of fees.

As you hear today from industry stakeholders, it will be evident that nearly every provision of the act has the potential to result in unintended consequences. Further study is warranted to fully understand the true impact to Ontario consumers and businesses before these provisions become law. For these reasons, StubHub strongly suggests that the act be amended to focus solely on the prohibition against the use of bots until such time as an independent study can be conducted.

1600

One of the major points of concern in the act is the establishment of price caps on ticket resales. This attempt to artificially control a global Internet-enabled market will lead to unintended consequences. Specifically, Ontario consumers and ticket businesses will be disadvantaged. Resales will be driven off of secure channels into places where consumers are exposed to counterfeit and fraud, with zero protections.

In 2015, the United Kingdom's Consumer Rights Act commissioned an independent study to investigate issues impacting the secondary market. The Waterson report, as it was called, found that price caps penalized consumers and businesses by shifting activity outside of that regulatory jurisdiction. The Waterson report recommended against the institution of price caps, and the UK government heeded this recommendation.

Notably, both the Canadian and Ontario Chamber of Commerce have weighed in with the committee, noting that price caps as well as other provisions of the act will stifle innovation, harm consumers and disadvantage Ontario-based businesses. We believe Ontario should commission a similar report.

Additionally, the creation of a private right-of-action for highly competitive ticket businesses can be easily abused. The provision enables competitors to use litigation to stifle competition in the name of enforcement. The added burden on the Ontario judicial system, as well as the increased cost of doing business in the province, will ultimately trickle down to consumers.

One area of the proposed act that StubHub believes can have a positive impact on consumers is a prohibition

of the use of bots to procure tickets. The use of bots to procure tickets provides an unfair advantage and only hurts fans. Yet the challenges that consumers face accessing tickets are not just because of the use of bots. The primary market frequently holds back large percentages of tickets from sale to the general public, which is largely unknown to fans. Understanding the allocation practices of ticket issuers helps consumers paint a clearer picture in their minds of the availability of tickets and their chances of procuring a ticket.

StubHub supports comprehensive legislation, bot legislation, and we have a long history of doing so. However, it is a partnership between the government and primary ticket issuers that will make this successful. For these reasons, StubHub strongly advocates in favour of a targeted bill that focuses solely on bots and calls for a study of the remaining provisions. If the committee elects not to pursue further studies, StubHub has submitted a series of amendments—

The Chair (Mr. Peter Tabuns): I'm sorry to say: With that, you're out of time.

Mr. Jeff Poirier: Thank you.

The Chair (Mr. Peter Tabuns): We go to our first questioners, the government: Mr. Dhillon.

Mr. Vic Dhillon: Thank you very much for your presentation. Can you expand on your position on the use of scalper bots in the industry?

Mr. Jeff Poirier: Yes. We have a long history of supporting legislation around the world that prohibits the use of bots. It is a question of not just whether the legislation gets put into effect; we believe it needs to be comprehensive and substantive.

One of the biggest issues we've seen over time is enforceability. We are not a primary ticket issuer. In our marketplace, we cannot tell if a ticket has been procured using illegal bot software. We will hold our sellers accountable if we do find that out, but this is very truly a partnership that needs to be created between the government and primary ticket issuers in order to be able to identify and then prosecute those users of illegal bot software.

Mr. Vic Dhillon: Can you tell us what your company is doing to help tackle this very important issue for our consumers?

Ms. Laura Dooley: Our company participates in a consortium of e-commerce companies that are frequently attacked using bot software. The use of bots to procure an item is not limited to the ticket space alone; it can be used to procure anything, whether it be a new sneaker, an iPhone or something that comes out. Our company serves on the council—and we can provide more information on what that council is—to trade best practices and understand how those technologies are harming our industry.

Our platform, as you can imagine, though, is very unique. We don't have ticket queues; we don't have ticket purchase limits. The consumer is able to purchase tickets however they want on StubHub. Really, the use of bots as an unfair advantage to procure tickets hits the primary market much more significantly than it hits the

secondary market. So we would certainly encourage our colleagues in the primary market to participate in councils like the one that we sit on.

Mr. Vic Dhillon: Thank you very much.

The Chair (Mr. Peter Tabuns): Mr. McDonell?

Mr. Jim McDonell: You're saying you're recommending that the primary market be more involved. Do you find that there's not that level of activity right now with the primary market in preventing bots?

Ms. Laura Dooley: I think that's a question better served for the primary market. They certainly spend a significant amount of time fighting the use of bots as well.

However, in order to properly enforce that law, it will take a strong partnership between the primary market and the government.

Mr. Jim McDonell: When it comes to caps, you see this as basically driving the market underground, and companies like StubHub that have a reputation of success, as far as the consumer goes—people will maybe be forced to follow the legislation, but groups, the majority of the market, can be outside this country, let alone outside Ontario, and will have an unfair advantage and actually end up hurting the consumer overall?

Ms. Laura Dooley: I believe so. When ticket sales are forced off of our platforms or other platforms that have investment in or a nexus to Ontario, consumers will lose, particularly if the government doesn't have enforcement reach over those entities.

We know a lot of those entities are located outside of Ontario. Some of the worst actors in particular are located just across the border in the US. Unfortunately, there won't be any leverage for the Ontario government to enforce this law.

Mr. Jim McDonell: So the legislation you see here is not suitable, actually, to control the bots, as you see it?

Ms. Laura Dooley: I think it's a step in the right direction with respect to bots, and that's why we endorse the passage of that provision.

I think the remaining provisions, particularly the institution of price caps, have some unintended consequences that need to be further studied before it's passed into law. Those consequences impact not only Ontario consumers but also Ontario businesses.

Mr. Jim McDonell: Anything else on the bill itself that you'd like to see included?

Ms. Laura Dooley: I would say that, absent a full re-examination of the legislation, or limiting it, or a study, we have submitted amendments to the committee that are designed to make some technical corrections to some of the proposed provisions and that we believe would take a large step forward in trying to eliminate some of those unintended consequences. We're happy to answer any questions about those amendments as well.

Mr. Jim McDonell: There is no question that the government is treating it like full control, but the majority or much of this market is outside the province. The consumer needs to know who the good players are and who the bad players are, or at least who the good players are, so

they have some confidence that if they use them, there's some protection. I don't see that anywhere in the bill.

Ms. Laura Dooley: We agree, yes.

Mr. Jim McDonell: Thanks.

The Chair (Mr. Peter Tabuns): Ms. Gretzky.

Mrs. Lisa Gretzky: If I can ask—I think you said you work with a group of primary ticket sellers. Who is that group?

Ms. Laura Dooley: It's actually an e-commerce group that goes across all retail. It's not specific to the ticketing world, because bots do have implications in other areas besides ticketing.

I am not familiar with the complete makeup of that group, but we're happy to send information after this meeting.

Mrs. Lisa Gretzky: Okay. Of the tickets that go up on your site—I will admit I've used it—are any of those tickets associated with a primary seller? Say Ticketmaster, for instance, holds back a bunch of tickets. Can they then post them on your site at a higher cost than they would have if they sold them directly from their own site?

Mr. Jeff Poirier: Yes, and many times they will leverage their own resale platform.

We have artists and promoters who come directly to StubHub to use us as a distribution channel. Those are not tickets being resold; those are tickets that are being sold for the first time where they are trying to capture the true market value of that ticket out the door.

Mrs. Lisa Gretzky: Okay. Would that be included in the number of tickets that we're referring to as being withheld? We have numbers; 25% to 90% of the tickets sometimes are withheld. Is that captured in that number, that the company or that venue is holding back? We have a wonderful venue in Windsor where we host many great concerts, and I know they hold tickets. So is that included in that number?

Ms. Laura Dooley: I would suggest yes. It's unclear to us what the actual holdback numbers are, and I think this is another area that warrants significant study. The only study that we can point to right now that did look at ticket holdbacks comes from the state of New York. The New York attorney general commissioned a study, and it was published in February 2016. In their research, they cited that on average, only 46% of tickets ever make it to sale to the general public. For high-demand events, that average drops to 25%. For significantly high-demand events—they cited a Katy Perry concert that dropped as low as 12% to 15%.

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Again, it's not something we have a lot of insight into. However, it is an area that I think would benefit from more study by the government.

Mrs. Lisa Gretzky: Is there any connection between any of the primary sellers and your company as far as same company or a branch of that company? If so, is there some sort of regulation or policy put in place? As a consumer, I wouldn't be very happy if I found out that we have a primary seller that has a secondary site where

they're selling it for more money when I could have just gone on that primary site. It's kind of like hedging your bet or however you want to put it. So is that the case, and if so, is there something put in place where there are only so many tickets with that affiliated company that you resell?

Mr. Jeff Poirier: Given that a seller can register on our site and sell the tickets, it's not clear to us whether or not that could be an artist. It could be an artist or a promoter who doesn't want somebody else within their chain of that business to know that they're selling tickets.

Mrs. Lisa Gretzky: But I mean specifically—

The Chair (Mr. Peter Tabuns): And with that, Ms. Gretzky, you're out of time. I'm sorry.

Thank you very much for your presentation today.

Mr. Jeff Poirier: Thank you.

Ms. Laura Dooley: Thank you.

ONTARIO HOME BUILDERS' ASSOCIATION

The Chair (Mr. Peter Tabuns): We go next to the Ontario Home Builders' Association: Mr. Vaccaro, Corey Libfeld and Samuel Saturno. Welcome back. If you would give your name first before you speak, for Hansard, and then speak clearly into the microphone.

Mr. Joe Vaccaro: Thank you very much. My name is Joe Vaccaro. I am the CEO of the Ontario Home Builders' Association, a network of 29 local associations across the province. I am joined today by Peter Saturno, a past OHBA president, a past Tarion board member and a proud builder from the Durham region.

It is important for the committee to know that under the creation of the new home warranty act and program more than 40 years ago, home building and home builders are a regulated profession in Ontario. The previous act combined both a regulatory function and a warranty provider, and under that system was able to regulate the activities of builders as well as to provide warranty assurance for the consumer.

Much has changed in Ontario in 40 years, including numerous Ontario building code changes, new regulatory requirements for municipal building inspectors and designers under the new BCIN regime, new permitting requirements under the Planning Act and many, many more changes, some even being worked on today in the Legislature, with changes to the OMB, conservation authorities and Construction Lien Act. That is to say that the home building process has changed.

What is important to remember is that consumers remain protected, and should have confidence in a government process that requires:

- that builders be regulated professionals by a registrar and required annual renewal;

- that homes being built are enrolled in the Ontario warranty program, providing protection for deposits and other items;

- that homes being built must satisfy the Ontario building code and the minimum 11 inspections that municipal building inspectors perform prior to occupancy;

- that, upon occupancy, the builder is required to warranty the home under the provisions of the warranty act;

- that the consumer has a clear process and decision mechanism to make a claim and to have it resolved; and

- that there is a warranty fund that can, if and when warranted, be activated.

What I'm saying here is that the process of selling, building and delivering a home to a consumer has a great deal of government regulation over and above the act. That means that our industry builds these homes, the building department inspects them, and the warranty provider provides warranty assurance. In this way, consumers are protected in Ontario.

The new proposed acts maintain this general structure in two parts, separating the regulator from the warranty provider with new definitions and protections. The decision to split the functions should provide more clarity to the process.

We would like to make note that we believe that the government missed the opportunity to deal with individuals who are building their own homes and selling them in the marketplace as a business, with no warranty, no required consumer protection and no warranty provider to protect that consumer. We refer to these actors as illegal builders.

The government made a commitment in their 2014 budget to deal with the issue of illegal builders. As it stated, "There is a concern for public safety because a house built illegally is at risk of substandard construction. In response, the government proposes to explore options to address this, which may include legislative and regulatory changes."

Since 2014, OHBA, Ontario building officials and Tarion have been actively educating consumers on the risks of buying an illegal home. Taking what they do in British Columbia, there are 15 Ontario municipalities actively engaging any individual who is pulling their own building permit to inform them of the risk and responsibility of building their own home and asking them, as they do in BC, to get a confirmation letter from Tarion that, in fact, this is a build-my-own-home permit, not a "use a loophole to be in the home building business" permit.

It was OHBA's expectation that the government would use this act to close the loophole and extend consumer protection. We would suggest to the committee and to the government that the act can be amended to extend the consumer protection. I believe that OBOA supports this position.

With that, I'll turn it over to Peter.

Mr. Peter Saturno: Thank you very much. I just wanted to add that as a home builder for over 30 years, I'm proud of what I do for a living. I'm proud of the homes and communities I've built. I'm proud to be a regulated professional home builder in Ontario.

Continuing to require home builders to be registered and licensed protects our profession and provides a mandatory legislative warranty in Ontario, which is a

good thing for home builders and a good thing for consumers, and I continue to support that. It means, as professionals—

The Chair (Mr. Peter Tabuns): Sir, I'm sorry to say that you're out of time.

We'll go to the official opposition, Mr. McDonell, for the first round of questions.

Mr. Jim McDonell: Do you have a couple of points you wanted to make?

Mr. Peter Saturno: I'm fine. Just that I make no excuses for what I do for a living. I'm proud to do what I do.

Mr. Jim McDonell: Do you find that the existing system actually rewards good builders, with the current inspection system we have in place in Ontario? Locally, I hear a lot of complaints about it. The municipalities are on the hook for everything and it doesn't allow good builders the opportunity to maybe do things that they know are right, without having restrictions put on them by the current regulation. And vice versa: You can't catch everybody with a building inspector. It's just not reasonable. In those cases, the loopholes, as you say, where the builder is off the hook—but really, it falls back to the municipality that relies solely on a building inspector actually seeing the problem.

Mr. Joe Vaccaro: I would just say, as I said earlier, that it's a big process to build a home. I think it was said earlier that every permit is not a permit that sits by itself. It touches on hundreds of different acts and regulations and pieces to it.

What we're seeing more and more is that there is more and more regulation being put in place. Many more hands are getting involved in getting that home to completion and occupancy. What ends up happening is that the builder, who ultimately is delivering that home and fulfilling their commitments—as you would say, sometimes their good work and good reputation doesn't get rewarded. It's simply part of the existing process.

Mr. Peter Saturno: Reputation is everything to a good builder. I would say that 95% of builders in Ontario are good builders. A builder is never off the hook. If I forgo or abate something that should have been my responsibility and it goes back to the municipality, I guarantee that in the next round of building permits I pull, the municipality will be on me like a hawk—or at least in the municipalities that I'm used to.

Mr. Jim McDonell: Are you looking at any other changes with this bill?

Mr. Joe Vaccaro: Well, the bill requires a great deal of regulatory work moving forward in terms of definitions, process and the rest of it. Splitting a corporation in an act that's been together for 40 years—the detangling of that will take a lot of work and a lot of clarity.

At the end of the day, the process itself should provide clarity on how a regulator should function and how a warranty authority should function. For the consumer, there needs to be clarity of decision-making, I think. This is one of the things that we always hear back from consumers. Unfortunately, the reality is that purchasing a

home is a very emotional purchase. You are invested in that home and in that community. So what you need is clarity when there is a dispute—and there will be disputes. You need clarity of process and decision-making so that the consumer is at least satisfied that the answer they've got is a credible answer, and that the builder building and delivering that home understands their rules and their obligations under that structure. A little more clarity, I think, will help everybody in that way.

The Chair (Mr. Peter Tabuns): And with that, I'm sorry to say that you're out of time.

We go to Ms. Gretzky.

Mrs. Lisa Gretzky: I'm wondering if you can maybe give me some more insight on the illegal builders: What happens, then, if I was to—if my dad was alive, he'd be laughing right now; my dad worked in construction—build my own home, or build a home and then sell it? If I chose to live in it for a few years, or if I immediately sold it after I built it—so I'm an illegal builder. What process is in place to protect someone who buys that home from me and what consequence is there to me for having done that without going through the proper processes?

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Mr. Joe Vaccaro: Thank you for that question. We look to BC. BC has a process in place where an individual who wants to pull their own permit is more than allowed to, but they have to confirm that they are pulling their own permit for the purposes of their own use.

They have another provision that says that if you sell this home within the mandatory warranty period of five years or seven years, you must reinsure to the second purchaser; you must extend a warranty to that second purchaser. So for someone who purchases that home in year 3, part of their purchase includes, "I, the seller"—the individual—"will warranty these items," whatever they are within that mandatory coverage, "for an additional two years." That extends that kind of protection.

In Ontario, there is nothing wrong with someone building their own home; there's nothing wrong with that. The question is, are you building that home for your own personal use, or are you using it as a loophole to avoid registering with the regulator—Tarion, in this case—and everything that goes with that, which means you have the security to carry the consumer responsibilities. Do you have them or not?

So we run across the situation where people want to be involved in the home-building "business" but they don't want to be in the home-building business, which is to register, financial obligations and, as I'm sure Peter can speak to you, a yearly renewal that confirms that he's fulfilling his obligations.

Mr. Peter Saturno: Every year, on renewal, we actually have to give financial statements, depending on the size, at least reviewed by a certified accountant. Someone who is building illegally doesn't have to.

Adding on to what Joe says, because of the federal tax structure, and it's considered a personal residence, they do it to skirt income tax as well, because of the exemption on a personal residence.

Unfortunately, even I have had customers who have come in and said, "I built my own home. Now I'm getting out of it because I made mistakes, so I'm buying one of yours." But someone ends up with their home with no warranty or no professional to go back and say, "Here, either there was a mistake or possibly you forwent regular maintenance." No one's there to clarify what's wrong with that home.

Mr. Joe Vaccaro: Let me just end by saying this: It's great to know that—

The Chair (Mr. Peter Tabuns): I apologize. You're out of time with this questioner.

We go to the government. Ms. Malhi?

Ms. Harinder Malhi: Hi. Thank you. What additional measures, if any, would you like to see added to Bill 166 in order to promote properly built residential construction in Ontario?

Mr. Joe Vaccaro: As we're speaking about this illegal building amendment that we're suggesting that would fulfill the government's budgetary commitment, I think that's a good start, because you're going to extend consumer protection to, in this case, a second purchaser. I think that's important moving on. And I think it's great that you have a situation where you have the building officials, those who inspect and provide the permit, the home-building industry—it's our reputation, ultimately; if there's a bad owner build, a bad home, and the consumer is upset about it, it reflects upon the entire industry—and in this case the regulator, Tarion, stepping in and saying that there is a path forward to deal with this issue that still gives people the opportunity to build their own home but also provides a new level of consumer protection. So I think that's a good amendment to look at and to bring forward, to fulfill that commitment.

The other thing I would say is that, as we work our way through the regulatory process now and we think about definitions, we have to keep in mind how all these things are connected to other acts. Changes in the building code and changes in engineering standards—all those things have to work together not from a legislative amendment side but from a regulatory side. A lot more work needs to go into that to connect all these pieces.

I'm sure Peter can talk about how, as a builder, he's relying on his engineer as much as he's relying on his designer to get things done.

Mr. Peter Saturno: Actually, the first thing I've got to state, with all due respect, is that you made some remark about "to build properly built homes." I'll put on the record that the homes built in Ontario are the best-manufactured homes, not in Canada, but worldwide, by any standard.

Do we have warts on them? Absolutely. But that being said, with the legislation going forward, the devil is in the details. The legislation that has come forward right now left too many blanks on who is actually going to be responsible for what. How are they going to fund it? That's what my worry is on the legislation right now.

Building better homes? We build better homes. If you look at our industry from any point of view—from health and safety, from energy—we far exceed the rest of the

world as a standard. In fact, the building code catches up to the way we progressively improve our homes from time to time.

Ms. Harinder Malhi: Of the changes proposed in Bill 166, which do you feel will most positively impact new-home buyers and owners?

Mr. Joe Vaccaro: I think that in the current structure, the clarity of the process, separating these two pieces—a regulator and a warranty authority—will provide consumers with the confidence that when they get an answer around a dispute, the answer is clear and it's timely.

One of the things we often hear about is the timeliness of answers. As we are always told, we cannot restrict the consumer from putting anything on their list. They are free to put whatever they want on that piece of paper. It then goes through a process to determine what is warrantable and what is not warrantable. The timeliness of those decisions and the clarity about how those decisions are made, will ultimately provide consumers with more confidence. We want them to have confidence in buying a new home. Only new homes receive any warranty coverage. Resale homes on the open market do not receive any warranty coverage, so there's an advantage to that.

The Chair (Mr. Peter Tabuns): I'm afraid to say: With that, we've come to the end of the time. Thank you very much for your presentation.

Mr. Joe Vaccaro: Thank you.

Mr. Peter Saturno: Thank you very much.

TRUEXPERIENCES TOURS

The Chair (Mr. Peter Tabuns): We now go to TruExperiences Tours: Darren Swidler. As you've probably heard, sir, when you start, if you'd introduce yourself so you're properly recorded in Hansard. Please speak into the microphone and speak clearly.

Mr. Darren Swidler: Darren Swidler from TruExperiences Tours.

The Chair (Mr. Peter Tabuns): Please proceed.

Mr. Darren Swidler: Thank you for the opportunity to present today. My company, TruExperiences Tours, operates luxury, private and small-group sightseeing tours in Ontario, which are marketed to international visitors.

This year, we have received a TripAdvisor Certificate of Excellence as well as a Viator Top Rated award for outstanding customer feedback. Our tours have also been featured in such publications as the Los Angeles Times and the Huffington Post.

As one of more than 2,000 small businesses registered with TICO, my company and other registrants are struggling with the following: First, the high cost of complying with the Travel Industry Act, a cost which is estimated to be approximately \$13,000 per registrant per year, or more than \$25 million for the Ontario travel industry as a whole; second, the requirement that HST be included in all-in pricing; and third, the level of transparency and accountability to TICO, as well as the lack of third-party oversight.

When considering compliance costs, it's helpful to look at Australia, because they retained an independent consulting firm to do a cost-benefit analysis when they did a similar review of their travel industry regulations. Their study estimated that it was costing registrants \$9 in compliance costs for every \$1 being paid out of the Australian Travel Compensation Fund. The consulting firm concluded that the 9-to-1 ratio was far too high and posed an unfair burden on business owners.

In Ontario, using the estimate of \$13,000 per registrant, it's costing the Ontario travel industry more than \$40 in compliance costs for every \$1 being paid out of the compensation fund. TICO's operating budget alone will rise from \$4.2 million in 2016 to a projected \$5.2 million in 2019, an increase of almost 25% in three years, even as the registrant base continues to decline. There also does not appear to be any independent data to support the need for requiring that registrants submit review engagements or audits or even for TICO to have a financial inspection program.

California has a much lower-cost travel registration program, with no financial reporting requirements at all, yet in the last five years, compensation fund payouts in California have averaged less than \$150,000 per year while protecting 39 million California residents.

With respect to all-in pricing, my company and other registrants have urged the ministry not to include HST in the all-in pricing requirements. Including HST makes Ontario inbound tours look 13% more expensive than comparable tours being sold in other provinces. It's interesting to note that the ministry introduced all-in pricing for vehicle sales but did not require that HST be included in the advertised price of a vehicle. Even the ministry acknowledges the challenges that TICO will face trying to get companies outside of Ontario to use all-in pricing when selling to Ontario residents. Even if this is successful, this pricing policy would also not do anything to assist inbound tour operators competing on a global stage.

With respect to transparency and accountability at TICO, I would urge this committee not to give TICO any additional enforcement powers until and unless a value-for-money audit is conducted and TICO is subject to third-party oversight. TICO claims to be transparent and accountable; however, try getting TICO to release an itemized list of the board of directors' expenses or even emails containing your name, and they will tell you that it's either private, not available, legally privileged or not relevant.

TICO promises to be fair to all registrants; however, there are multiple examples of TICO providing special treatment to registrants that support them while retaliating against those that do not. TICO insists that they would want to hear from registrants; however, they continue to refuse to do even a simple registrant satisfaction survey.

Finally, TICO says they will be cost-efficient; however, every year they remove approximately \$3 million in administrative expenses from a compensation fund that's intended to reimburse consumers, and have failed repeat-

edly to issue competitive tenders when buying goods or services.

We all want to see consumers protected, and no one wants to see anyone defrauded; however, we need to make sure that with 93% of travel sales already being protected by credit card chargebacks and 80% of travel sales being booked directly with suppliers, all of whom are exempt from the act, this legislation is actually achieving its goal of strengthening protection for consumers—

The Chair (Mr. Peter Tabuns): I'm sorry to say that you're out of time.

We'll go to the first questioners. Ms. Gretzky.

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Mrs. Lisa Gretzky: My question is around the compensation fund. You piqued my interest on that one because we had presenters come in and suggest that consumers should have to pay a fee, \$1 per \$1,000, whereas travel agents or travel providers pay 25 cents per \$1,000. This was in another jurisdiction, so they're just going by what they charge. They were basing that on the fact that the compensation fund isn't enough, that there isn't enough money to go around, and people—airlines, for instance—who don't have to pay into this fund still take from this fund, essentially. Maybe I'm misunderstanding, but you're telling me that TICO actually draws money out of that compensation fund for something other than compensating.

Mr. Darren Swidler: That's correct, yes. Approximately \$3 million per year is removed from the compensation fund for administrative expenses. They take 100% of their inspection and compliance costs out of the fund, and then they go back in and take approximately 65% of all their other expenses out of the compensation fund.

Mrs. Lisa Gretzky: Then I think—and again, I may have misunderstood. I know you have to talk fast, trying to get it all out in the little time frame you're given. You have concerns with companies like yours around the financial reporting and the requirements around that, and then you're saying that TICO doesn't fall under those same types of reporting requirements that you do.

Mr. Darren Swidler: I'm saying that the compliance costs are quite high, so registrants really struggle with the financial reporting requirements, whether it be a review, an engagement or an audit. In the last few years, the costs of these have really risen. It has really impacted the compliance costs overall. Now, it's \$13,000 per year to comply with the act.

Mrs. Lisa Gretzky: So you are required to—

Mr. Darren Swidler: Submit.

Mrs. Lisa Gretzky:—submit financial reports?

Mr. Darren Swidler: Sure; depending on your volume of sales, either an annual review engagement or an audit.

Mrs. Lisa Gretzky: Okay, but were you then saying that TICO doesn't fall under the same rules, TICO isn't as transparent about their—

Mr. Darren Swidler: Right. I don't think they're transparent about their compensation fund. Those are two

separate things, right? One is the annual reporting requirement and the second part is the compensation fund.

Mrs. Lisa Gretzky: And there's no requirement for them to report to travel providers, companies like yours, that would have to contribute to that fund? They don't have to report to you what's happening with that money?

The Chair (Mr. Peter Tabuns): Ms. Gretzky, I'm sorry to say that you're out of time.

We'll go to the government: Mr. Dhillon.

Mr. Vic Dhillon: Thank you very much for your presentation. As a registrant, can you please describe the changes to the travel marketplace that your business has experienced over the last decade?

Mr. Darren Swidler: The changes to the travel marketplace?

Mr. Vic Dhillon: Yes.

Mr. Darren Swidler: Sure. Not for me specifically, but talking about registrants as a whole, one big change is obviously the percentage of consumers that are booking directly with suppliers. No matter what we do in terms of the legislation here, it's important to note that about 80% of travel is now booked directly with suppliers. The person's travel has really become a global purchase. Consumers are booking with airlines, with cruise lines and with hotels directly, leaving about 20% of the pie to third parties. That's why it's so important, when we're looking at compliance costs, that we keep them reasonable, because travel companies have to compete against all these direct suppliers and, also against other tour operators and travel agencies located in other provinces, in the United States and around the world as well.

Mr. Vic Dhillon: Can you suggest any other additional measures to improve protection for consumers in this bill?

Mr. Darren Swidler: Sure. What I would suggest is that I think it's worthwhile looking at whether a private sector insurance program would be more worthwhile, would be more efficient and might cover all travel purchases instead of just travel purchases that are made with travel agents and tour operators.

Mr. Vic Dhillon: Just as an aside, what are the latest trends in terms of where we're getting the tourists from, which areas of the world? Just as a business—

Mr. Darren Swidler: I'm sorry; I didn't catch the beginning.

Mr. Vic Dhillon: Where are your expanding markets?

Mr. Darren Swidler: Our main market is the United States. For us, for me personally, for my company, it's the United States. After that, it's the UK, Australia and New Zealand. We target high-end travellers looking for private and small group tours in Ontario.

Mr. Vic Dhillon: Okay. Thank you very much.

The Chair (Mr. Peter Tabuns): Thank you, Mr. Dhillon. We go to the official opposition: Mr. McDonell.

Mr. Jim McDonell: You talk about the number of dollars paid out. For every dollar the consumer gets, you're saying it's almost \$40 in costs?

Mr. Darren Swidler: That's correct. For every dollar being paid to consumers from the compensation fund, the compliance costs are \$40. The ratio is 40 to 1. I use that

as a comparison with Australia, where they retain Price-waterhouseCoopers. In their report, they determined that in Australia it was costing \$9 in compliance costs for every dollar being paid out of the compensation fund. They said that was too high, and they recommended the closure of the Australia compensation fund, which occurred in 2014.

Mr. Jim McDonell: There's a case where \$9 was too high, but we're more than four times that up here.

Mr. Darren Swidler: That's correct.

Mr. Jim McDonell: That does seem high. You're dealing with a lot of, I guess, international markets, not so much those from Ontario. Do you see yourself at a disadvantage because of this regulation?

Mr. Darren Swidler: Absolutely. It's the compliance costs. The regulatory burden puts us at a disadvantage. The all-in-pricing really puts us at a disadvantage because our tours look 13% more expensive. Even with the amendments here—although it's helpful, maybe, for outbound tours—by requiring that anyone selling to Ontarians follow the all-in pricing, it really doesn't help inbound tour operators. There's very little focus in this legislation on inbound tour operators, which is surprising, since we're so important in bringing visitors into the province.

Mr. Jim McDonell: You talk about other legislation not requiring that, and you're right: Most legislation doesn't require the addition of the HST. The prices are without that. Of course, you're dealing internationally, so there's an inability for them to actually include that, really, so when you're looking at the cost, it automatically looks 13% cheaper elsewhere. Any other issues you see with this legislation?

Mr. Darren Swidler: I think those are the main ones. Trying to get the compliance burden down, I think, is important and removing that HST requirement. Looking perhaps at a private sector insurance program I think would be helpful. And perhaps offering an exemption for domestic travel: I think that would be really, really helpful, since so much of it is targeted at outbound travel and so little travel is booked by Ontarians through third parties here for domestic travel. An exemption for domestic travel would really help inbound tour operators.

Mr. Jim McDonell: But you're right, there's so much of this limiting—if you utilize any of the international airlines, which is the majority, you're not dealing with Canadian websites.

Mr. Darren Swidler: That's correct.

Mr. Jim McDonell: Thank you.

The Chair (Mr. Peter Tabuns): Thank you for your presentation, sir.

Mr. Darren Swidler: Thank you for your time. My pleasure.

CYCLE CANADA

The Chair (Mr. Peter Tabuns): Next we have Cycle Canada: Bud Jorgensen and Margot Jorgensen. As I'm sure you've heard, when you begin would you please introduce yourself so that you're recorded on Hansard,

and if you would speak directly into the microphone, clearly. Thank you very much.

Ms. Margot Jorgensen: I'm Margot Jorgensen. This is Bud Jorgensen. We are co-owners and operators of Cycle Canada, the Veloforce Corp. We're an Ontario-based company that operates supported bicycle tours across Canada. We go from sea to sea to sea, from Vancouver to Tuktoyaktuk to St. John's. Our cross-country trips are higher-profile but we also offer vacation-length excursions on country roads where participants experience local cultures.

We are the supplier; I want to emphasize that. More than half of the people on our trips come from outside Canada. We bring tourist dollars into Ontario. We've been in business for 30 years.

Two years ago, TICO contacted us and made us register; and we did so under protest. We understand that the broad objective of the Travel Industry Act provisions of Bill 166 is consumer protection, but which consumers and which transactions? From information published by TICO, we have analyzed the record of claims on TICO's compensation fund. About 95% of the dollar amount of claims involved airline and cruise ship travel. The overwhelming majority of these claims were for travel to and from destinations outside of Canada. It seems clear to us that the typical TICO consumer takes sunspot vacations and takes tourist dollars out of Ontario. We cannot find a single incident where a company similar to ours has been the cause of a claim on the compensation fund. Yet, we are compelled to make contributions to the fund and to incur costs and time substantially in excess of any reasonable assessment of the risk we pose to Ontario consumers.

We have broader concerns about the compensation fund. Our trips have challenge components: Participants are on public roads where they can be exposed to risk. We take a great deal of care in our registration process to be sure that participants understand the responsibility that they must take on themselves when they head down the road on a bike. We are concerned that TICO sends the wrong message to our customers by creating unrealistic expectations of consumer protection.

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Our specific issues are:

—A review engagement for financial statements: This requirement is an onerous burden on a company of our size. As a result of phase 2 public review of the legislation, it has been proposed that companies with annual revenue of less than \$2 million be exempt. We concur and ask that the committee use its influence to have this regulation put into effect promptly.

TICO estimates the cost of a review engagement at about \$3,000; ours was \$7,000. We deliver our books to our accountant electronically to a trial balance level. As of mid-December 2017, the Auditing and Insurance Standards Board will enforce a revised and more detailed standard for review engagements, which will likely mean higher fees.

—Trust accounts: It is our understanding that TICO wants to replace the current option of having a trust

account with a larger security deposit. This flies in the face of what the federal government is hoping to achieve with recent policy decisions aimed at freeing up business funds to grow a business.

—All-in pricing: It's our understanding that this matter is a result of consumer complaints about add-on charges for air travel, particularly offshore carriers that may be beyond the reach of Ontario regulators. We are not involved in air travel, and this requirement puts us at a disadvantage with competitors who are not registered with TICO. We ask that the application of this rule be suspended for companies like ours—companies that bring tourist dollars into Canada.

When GST was first introduced, the clear intent was that it be transparent. The result of TICO's plan for all-in pricing likely will mean that travel agents simply show the total price. That option is complicated for our business. We must collect GST or HST based on time spent in a jurisdiction. Since our trips cross provincial boundaries, we have several different rates. Thus, with the same base fee for our trips of similar duration, we have different totals, and that's tough to explain to our customers. Our survey of industry practices suggests that TICO has not been consistently enforcing this regulation.

—Imposing advertising standards on sellers outside of Ontario—

The Chair (Mr. Peter Tabuns): I'm sorry to say that you're out of time.

Ms. Margot Jorgensen: Oh. I had timed that, too.

The Chair (Mr. Peter Tabuns): We go to the government first. Mr. Dhillon.

Mr. Vic Dhillon: Thank you for your presentation. Can you describe the potential impacts that Bill 166 could have on your company, as a small business based in Ontario?

Mr. Bud Jorgensen: It increases our operating costs. Mr. Swidler said that it was this average of \$13,000 a year, and I would concur with that number. That is a substantial part of our revenue. We are an end supplier. We are brought into this because the way the act is defined, but we don't think that we fit at all in the TICO universe. We are there because we get hotel rooms, and that makes us a supplier, supposedly, of tourism services. But we buy those in our name; we book the hotel rooms in the name of the company and we pay the bills. We just provide space at different locations for people on our trips.

Mr. Vic Dhillon: Do you have any suggestions for changes that can be made to Bill 166 to enhance consumer protection?

Mr. Bud Jorgensen: We're not travel agents, so it's difficult for us to comment on that, because the legislation includes us when we're not offering an agency service. An agency service is a middleman service; we're not that. We're end suppliers.

Ms. Margot Jorgensen: Ms. Paradis described it. The travel agent is taking money. They're handling it one to another, and they're taking a cut in the middle; that's not what we do. I understand the agency role. I have a

real estate background, so I get it. There is a necessity to protect that money, because it's not their money, but we are getting the money in to pay—we have to hire the staff, we prepare the routes, all this sort of stuff. It's all us; we don't subcontract.

Mr. Vic Dhillon: Thank you.

The Chair (Mr. Peter Tabuns): Mr. McDonell.

Mr. Jim McDonell: Your costs to comply—what does that involve? You're saying it was \$9,000 a year or something.

Mr. Bud Jorgensen: That \$7,000 for review engagement is one. It cost us \$3,000 to register. We understand that that fee, which is quite high, is meant to be a barrier to entry. They don't want small operators in TICO. Then we have to pay the annual fee for the compensation fund based on our revenue.

Mr. Jim McDonell: Would you be opposed to the cost we heard before of \$1 per \$1,000?

Mr. Bud Jorgensen: Absolutely. It goes straight through to us, and it has no benefit to companies like ours, because we are not agents. We don't do airline travel. The big fear that the travel agencies have is the collapse of an airline, and that's not what we do. We don't sell airline tickets. We don't even get involved in people coming because, for a particular trip, we can have people from four or five different countries. Roughly half the people who do our trips now come from outside Canada, so we bring money into Ontario, into Canada.

Mr. Jim McDonell: So with other suppliers that you may be competing with, would there be any international—setting up these trips, are they mostly Canadians?

Mr. Bud Jorgensen: Absolutely. There are big companies in the US that operate trips in Canada, and they're not required to be part of TICO.

Mr. Jim McDonell: That part of it, as far as your HST—are they not required to include that? Because it is a cost that's going back to the—

Mr. Bud Jorgensen: I presume. I don't know how those other companies would deal with HST. I know what we do. As I said, we are required to collect GST, HST based on time spent in a jurisdiction. So if we have a trip that's half in Ontario and half in Quebec, we collect 13% for half the fee and 5% for the other half.

Mrs. Margot Jorgensen: We try to have a consistent price for our one-week trips of \$1,375, and then, because they're in multiple provinces, they end up being \$1,483.96 and 15—it's very difficult. That's what they look at. We'd rather have the value. I think that's protecting consumers, because they understand what they're getting.

Mr. Jim McDonell: Yes.

Mr. Bud Jorgensen: And where we offer five-day trips, they are roughly the same because our direct costs are no different whether we are in Ontario or Quebec. Other costs that we would pay using local services are not that different. The all-in pricing thing creates a distorted view of what we're offering and of the market.

Mrs. Margot Jorgensen: We don't understand why it ended up that way, because the act as it was drafted had tax separately, and all of a sudden, when it became

finalized, it was included. I guess it was a meeting like this, but we thought, "Oh, okay."

The Chair (Mr. Peter Tabuns): And with that, Mr. McDonell, we're out of time.

Thank you very much. We appreciate your presentation today.

ONTARIO REAL ESTATE ASSOCIATION

The Chair (Mr. Peter Tabuns): We now go to the Ontario Real Estate Association. Gentlemen, when you begin, if you could introduce yourselves so that you're accurately recorded in Hansard. Please speak into the microphones and project. Thank you.

Mr. John Oddi: John Oddi and Matthew Thornton. Thank you, Mr. Chair, and thank you, committee, for allowing us to present on Bill 166. As I said, my name is John Oddi and I am the government relations committee chair for the Ontario Real Estate Association. Joining me today is Matthew Thornton, OREA's vice-president of public affairs and communications.

OREA represents over 70,000 real estate salespeople and brokers who belong to 39 real estate boards. We are the largest association in Ontario representing real estate professionals and the largest provincial association in Canada.

With respect to Bill 166, our presentation will focus on schedule 5, which proposes changes to the Real Estate and Business Brokers Act, or REBBA.

OREA fully supports the changes contained in schedule 5 and encourages this committee to send them back to the Legislature unchanged. OREA was proud to have worked with Minister Tracy MacCharles and her team in the lead-up to the introduction of Bill 166. We want to commend the minister for her leadership on this issue and for her commitment to making good public policy grounded in evidence.

REBBA is over 15 years old. It was passed in 2002, when most deals were closed using fax machines, the iPhone was five years away and social media was a pipe dream. REBBA governs real estate professionals who service a vital part of our economy. We need to modernize the act for a modern Ontario real estate market, modern consumers and modern realtors. This includes raising the maximum fine for breaches of the REBBA code of ethics. The maximum fine currently is \$25,000 for salespeople and \$50,000 for brokerages.

The effectiveness of the current fines in REBBA has eroded with time and they need to be increased. The overwhelming majority of real estate professionals in our province are hard-working, ethical small business people helping to build stronger communities. But for a very small number who break our rules, our regulator needs the right tools to not only punish the behaviour but deter it as well. That's why OREA supports increasing the fines to \$50,000 for individuals and \$100,000 for brokerages, as outlined in schedule 5.

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The other part of the legislation that OREA would like to comment on pertains to changes in the ability for the

real estate professional to represent more than one party in a real estate transaction, called multiple representation. Bill 166 provides the government with the ability to introduce mandatory designated representation, or MDR, through regulations. If passed, MDR would only permit an agent to work with one client in a transaction.

OREA supports this change. It will create better-informed consumers, build on best practices from other provinces and follow an emerging national standard for representation in real estate.

Under the proposal put forth by the ministry, the only way that a salesperson or broker will be able to work with two clients in a transaction is if a buyer and a seller agree to proceed to facilitation after certain conditions have been met. In our submission to the government's consultation in July, OREA proposed a very similar model. We are happy to see that the government listened to the advice of the industry.

The legislation strikes an important balance between protecting consumers while still giving them a choice as to who represents them as they make the largest financial decision of their life. In places like rural Ontario, consumers often want to work with a particular agent because of expertise or a pre-existing relationship. The ability for consumers to work with the agent they want should be maintained with proper consumer protection and informed consent. Bill 166 achieves this result.

We have appreciated the government's commitment to working with Ontario realtors to modernize the rules that govern real estate in Ontario. We are looking forward to working with all three parties on the second phase of the REBBA review next spring.

We'd be happy to take any questions.

The Chair (Mr. Peter Tabuns): Thank you very much. First questions go to the official opposition: Mr. McDonell.

Mr. Jim McDonell: Are there any issues that you see that should be or need to be addressed that aren't in this legislation?

Mr. Matthew Thornton: Thank you, Mr. McDonell. Yes. But I think the important thing to emphasize is that the government has committed to a two-phased approach to the review of the Real Estate and Business Brokers Act. The first phase is contained in schedule 5 of the bill, which tackles, as John mentioned, the changes to multiple representation and fines. The second phase of the government's review that they've committed to is going to look at the entire act. That's going to look at every piece of legislation.

As an association, we've launched a really large consultation with our members to engage them in a discussion about what kinds of changes we need to make to the act to modernize it. We're looking at things like ethics, education and enforcement.

The government's commitment on phase 2 is that it's going to extend into 2018, likely through the June election. That's why we think it's important for all parties to support phase 2 as it moves forward.

It really is about modernization. As John mentioned, the act is 15 years old, so it's time for an update.

Mr. Jim McDonell: So the government in discussions—it has been 15 years, you say. Have they committed to—I guess they're telling you that there will be big changes coming, but they don't want to talk about them before the election.

Mr. Matthew Thornton: I don't think we've quite got there yet, Mr. McDonell. I think the government's commitment to us has been, "Let's get through Bill 166. Let's get that through the legislative process. Let's get working on the regulations that are going to implement Bill 166. Then we can start to sketch out an outline for what the second phase will look like." But that's why we've started our consultation. We're going to be coming to the table with a lot of great recommendations on what that second phase can look like.

Mr. Jim McDonell: Has there been any word on the consultation process that they're planning to start?

Mr. Matthew Thornton: No specific details yet, except to say that in early 2018 we expect that process to start.

Mr. Jim McDonell: It's kind of a "trust me on this one." We'll see what comes out of this. Now, you're going to be an active partner in that? You've started your own consultation with your own group, as you say.

Mr. Matthew Thornton: Absolutely, including realtors from Cornwall and other places. We're really excited about it. Rebbareform.ca is the website we've created. We're doing a white paper process. We've struck a task force made up of realtors from all over the province and from every section of the industry to come up with really forward-looking ideas for reform. It's a really exciting process for us.

We have to give credit to the government for committing to that process. It was part of their Fair Housing Plan commitment, actually. It's something, as I said, that we're quite excited about.

Mr. Jim McDonell: You talked about rural Ontario and some of the issues—

The Chair (Mr. Peter Tabuns): Mr. McDonell, I'm sorry; you're out of time.

We'll go to Ms. Gretzky.

Mrs. Lisa Gretzky: I'm wondering if you can speak a little bit more about, I think you called it, REBBA and how that is going to change, reduce or eliminate any conflict of interest and actually improve transparency.

Mr. Matthew Thornton: Sure, sure.

Mr. John Oddi: Go ahead.

Mr. Matthew Thornton: The legislation itself is quite permissive in nature. The changes that are in the legislation really open up the door and create some room for regulation-drafting that will take place post-third reading and royal assent.

But the commitment that the province has made is to implement a system called mandatory designated representation. What that system would do is, when two clients working with the same salesperson are interested in the same property, the new rule would say that the brokerage would have to appoint another agent from inside the brokerage to represent the other party. We think that's a good idea. That's actually a model that's in

use in a number of other jurisdictions in Canada and some in the United States. It would go a long way to minimizing that conflict of interest which you mentioned.

It's important to note, though, that I think a blanket rule like that would be quite detrimental to a lot of markets in particular rural markets where there aren't a lot of agents working and where some agents have specific expertise in certain property types that consumers want. Our view on this is that if a consumer has informed consent, they should be able to work with whomever they want.

What the government has done and what they're suggesting that they'll be looking at through the regulation-drafting process is establishing that mandatory designated representation rule, with the only exception being if consumers consent to enter into what's called a facilitation-type transaction. In that role, an agent would just be a transaction facilitator. They would only act to provide information, not advice. The agent is kind of stepping back from the transaction itself, but, at the same time, would maintain consumer choice at the end of the day. If a consumer was okay with it and they were informed about it and the requirements that the agent would have to follow, they could still work with the agent if they wanted to.

Mrs. Lisa Gretzky: If there's an instance where you're my agent and you're Mr. McDonell's agent, and I'm looking to purchase his home, does this change anything around how that plays out? One agent, two different clients—and I want to purchase his home, so you're the agent for both of us. Does this do anything around that?

Mr. Matthew Thornton: Yes, it does, absolutely. It would say that, in that instance—so I'm the agent—the brokerage that I work for is required to appoint another agent to work with either of you, unless you really wanted to work with me. In a lot of instances, consumers have pre-existing relationships. Maybe they've bought and sold a number of properties with—

The Chair (Mr. Peter Tabuns): And with that, I'm sorry to say, you're out of time.

We go to the government for the last round of questions. Ms. Malhi.

Ms. Harinder Malhi: Thank you for your presentation. Does OREA think that Bill 166 effectively addresses the conflict of interest associated with multiple representation situations?

Mr. Matthew Thornton: Yes, I think it's a very positive step forward. If you look at other jurisdictions that have tackled this issue recently, they've really taken a knee-jerk policy response to the problem. I give full credit to our minister and her policy team who really took a step back and said, "Do you know what? We're going to tackle this issue, but let's do it in a thoughtful way." They studied it. They consulted with the regulator, with us and a number of other stakeholders. They did their homework, and I think they came back with a solution that's going to definitely improve standards and that's going to improve transparency, but it's going to work in every market in the province as well. I think that's really a positive step forward.

Ms. Harinder Malhi: Do you think that it strikes the right balance between consumer choice and consumer protection?

Mr. Matthew Thornton: Oh, 100%.

Mr. John Oddi: Yes, 100%. I agree totally.

Ms. Harinder Malhi: Thank you so much.

The Chair (Mr. Peter Tabuns): Gentlemen, thank you for your presentation.

Mr. Matthew Thornton: Thank you, Mr. Chair.

Mr. John Oddi: Thank you.

The Chair (Mr. Peter Tabuns): Members of the committee, we're now at the end of presentations. This is a reminder that the deadline for written submissions is 6 p.m. on Tuesday, November 21, 2017. The deadline for filing amendments to the bill with the Clerk of the Committee is 2 p.m. on Thursday, November 23, 2017.

We stand adjourned until 4 p.m. on Tuesday, November 21, when we will continue with public hearings on Bill 166.

The committee adjourned at 1659.

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